



Post Office Box 9010 Addison, Texas  
75001-9010  
5300 Belt Line Road  
(972) 450-7000 Fax: (972) 450-7043

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## **AGENDA**

### **REGULAR MEETING OF THE CITY COUNCIL**

**AND / OR**

### **WORK SESSION OF THE CITY COUNCIL**

**6:30 PM**

**OCTOBER 11, 2011**

**TOWN HALL**

**ADDISON TOWN HALL, 5300 BELT LINE, DALLAS, TX 75254**

### **WORK SESSION**

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Item            Discussion regarding Council rules and procedures.  
#WS1 -

Attachment(s):

1. City Council Procedures - change from the last meeting
2. City Council Procedures - Clean Copy
3. City Council Procedures - All changes since initial discussion

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**REGULAR MEETING**

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## **Pledge of Allegiance**

Item #R1- Announcements and Acknowledgements regarding Town and Council Events and Activities

Introduction of Employees

Discussion of Events/Meetings

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Item #R2- Consent Agenda.

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#2a- Approval of Minutes for the September 27, 2011 Regular Council Meeting.

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#2b- Approval of a Temporary License Agreement providing for the temporary use by the owner of Lot 3, Block B, Vitruvian Park Addition, of a portion of Vitruvian Way and Bella Lane for the installation of underground soil nails as a part of a soil retention system in connection with the construction of improvements on the said property.

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Item #R3 Discussion and Consideration of an appointment of a  
- Member to the Planning and Zoning Commission.

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Item #R4 **PUBLIC HEARING** Case 1641-SUP/Exxon-Wendys. Public  
- hearing, discussion and consideration of approval of an ordinance approving a change to an existing planned development zoning district, being Planned Development District Ordinance No. 626 that zoned the property generally located at 3710 Belt Line Road, in order to allow the sale of beer and wine for off-premises consumption, and approving a Special Use Permit for the sale of beer and wine for off-premises consumption only for that said property, located in a Planned Development District located

at 3710 Belt Line Road, on application from Exxon-Wendys, represented by the Gerald Franklin Agency.

COMMISSION FINDINGS: The Addison Planning and Zoning Commission, meeting in regular session on September 22, 2011, voted to recommend approval of an amendment to an existing Planned Development District, #626, in order to allow the sale of beer and wine for off-premises consumption only, and approval of a Special Use Permit for the sale of beer and wine for off-premises consumption only, on application from Exxon/Wendys, subject to no conditions.

Voting Aye: Doherty, Groce, Gunther, Hewitt, Oliver, Wheeler,

Voting Nay: none

Absent: Angell

Attachment(s):

1. docket map, staff report, and commission findings

Recommendation:

Administration recommends approval.

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Item #R5 **PUBLIC HEARING** Case 1642-SUP/Petite Pooch

-

Chateau. Public hearing, discussion and consideration of approval of an ordinance providing for a change of zoning on a tract of land generally considered within the Town at 15070 Beltwood parkway, which tract of land is currently zoned Commercial-2, by approving for that tract of land a Special Use Permit for a dog grooming salon/dog kennel on application from Petite Pooch Chateau, represented by Mr. Ed Homko, owner.

COMMISSION FINDINGS: The Addison Planning and

Zoning Commission, meeting in regular session on September 22, 2011, voted to recommend approval of a Special Use Permit for a dog grooming salon/dog kennel, on application from Petite Pooch Chateau, subject to no conditions.

Voting Aye: Doherty, Groce, Gunther, Hewitt, Oliver, Wheeler,

Voting Nay: none

Absent: Angell

Attachment(s):

1. docket map, staff report, and commission findings

Recommendation:

Administration recommends approval.

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Item #R6 **PUBLIC HEARING** Case 1643-SUP/Raising Canes

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Chicken Fingers. Public hearing discussion and consideration of approval of an ordinance providing for a change of zoning on a tract of land generally located within the Town at 4100 Belt Line Road, which tract of land is currently zoned Planned Development District #004-033, by approving for that tract of land a Special Use Permit for a restaurant on application from Raising Canes Chicken Fingers, represented by Mr. John Spiars of Spiars Engineering, Inc.

COMMISSION FINDINGS: The Addison Planning and Zoning Commission, meeting in regular session on September 22, 2011, voted to recommend approval of a Special Use Permit for a restaurant, on application from Raising Canes Chicken Fingers, subject to the following condition: -the landscaping plan shall be revised to show the replacement of 13 existing cedar elm trees with four, 6-

inch diameter cedar elms, and 12, 6-inch diameter red oak trees.

Voting Aye: Doherty, Groce, Gunther, Hewitt, Oliver, Wheeler,

Voting Nay: none

Absent: Angell

Attachment(s):

1. docket map, staff report, and commission findings

Recommendation:

Administration recommends approval.

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Item #R7

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**PUBLIC HEARING** Case 1644-SUP/Dream Café. Public hearing, discussion and consideration of approval of an ordinance providing for a change of zoning on a tract of land generally located within the Town at 5100 Belt Line Road, Suite 582B, which tract of land is currently zoned Planned Development District #002-001, by approving a Special Use Permit for a restaurant, and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only on application from Dream Café, represented by Ms. Mary O'Brien.

COMMISSION FINDINGS: The Addison Planning and Zoning Commission, meeting in regular session on September 22, 2011, voted to recommend approval of a Special Use Permit for a restaurant and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, on application from Dream Café, subject to no conditions.

Voting Aye: Doherty, Groce, Gunther, Hewitt, Oliver, Wheeler,

Voting Nay: none

Absent: Angell

Attachment(s):

1. docket map, staff report, and commission findings

Recommendation:

Administration recommends approval.

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Item #R8 Public hearing, consideration, and approval of an ordinance amending the Town's Code of Ordinances by amending Article II (Property Taxation) of Chapter 74 (Taxation) thereof by amending section 74-33 providing for the taxation of certain tangible personal property, described as goods-in-transit, which would otherwise be exempt pursuant to Section 11.253 of the Texas Tax Code, and providing that the taxation of such tangible personal property applies to and is effective for 2012 and all tax years thereafter.

Attachment(s):

1. Ordinance
2. DCAD Letter

Recommendation:

Staff recommends approval.

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Item #R9 Discussion and consideration of approval of a Resolution approving, and authorizing the City Manager to execute, an Interlocal Master Agreement with Dallas County for the purpose of Transportation Improvements on roads in Dallas County that are designated on the North Central Texas Council of Governments Regional Thoroughfare Plan.

Attachment(s):

1. Resolution for Interlocal Agreement
2. Dallas County Master Agreement

Recommendation:

Staff recommends approval subject to final review of the City Attorney.

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Item  
#R10 -

Discussion and consideration authorizing the City Manager to execute amendment #4 with Freese and Nichols for the Elevated Storage Tank Design in the amount not to exceed \$26,261.48.

Attachment(s):

1. Amendment #4

Recommendation:

Staff recommends approval.

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Item  
#R11 -

Discussion and consideration authorizing the City Manager to execute amendment #2 with RH Shackelford in the amount not to exceed \$193,054 to provide project management and inspection services for current projects and proposed projects; engineering services as needed and a review and analysis of the Public Works Department operations.

Attachment(s):

1. Amendment #2
2. Amendment #2 detail

Recommendation:

Staff recommends approval.

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Item  
#R12 - Discussion and consideration of approval of a resolution affirming the appointment of a member of the DART Board of Directors.

Attachment(s):

1. DART Resolution

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Item  
#ES1 - Closed (Executive) session of the Addison City Council pursuant to Section 551.087, Texas Government Code, to discuss or deliberate regarding commercial or financial information that the City Council has received from a business prospect or business prospects that the City Council seeks to have locate, stay, or expand in or near the territory of the Town of Addison and with which the City Council is conducting economic development negotiations, and/or to deliberate the offer of a financial or other incentive to such business prospect or business prospects.

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Item  
#R13 - Consideration of any action regarding commercial or financial information that the City Council has received from a business prospect or business prospects that the City Council seeks to have locate, stay, or expand in or near the territory of the Town of Addison and with which the City Council is conducting economic development negotiations, and/or any action regarding the offer of a financial or other incentive to such business prospect or business prospects.

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Adjourn Meeting

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Posted:  
Chris Terry, 10/7/2011, 5:00 pm



**THE TOWN OF ADDISON IS ACCESSIBLE TO PERSONS  
WITH DISABILITIES. PLEASE CALL (972) 450-2819 AT LEAST  
48 HOURS IN ADVANCE IF YOU NEED ASSISTANCE.**

## Council Agenda Item: #WS1

**AGENDA CAPTION:**

Discussion regarding Council rules and procedures.

**FINANCIAL IMPACT:**

n/a

**BACKGROUND:**

n/a

**RECOMMENDATION:**

n/a

**COUNCIL GOALS:**

N/A

**ATTACHMENTS:**

Description:

- ☐ [City Council Procedures - change from the last meeting](#)
- ☐ [City Council Procedures - Clean Copy](#)
- ☐ [City Council Procedures - All changes since initial discussion](#)

Type:

Cover Memo  
Backup Material  
Backup Material

## **CITY COUNCIL PROCEDURES**

### **SECTION 1. MEETINGS**

Three types of meetings are recognized:

- A. Regular Meetings will be held on the second and fourth Tuesday of each month. Meetings will be held at Town Hall in the Council Chambers commencing at 7:30 p.m., unless otherwise posted.
- B. Special Meetings are subject to call by the Mayor, City Manager, or three members of the City Council with written notice to the City Secretary. These meetings will be held at Town Hall unless otherwise posted, at a stated time.
- C. Work Session Meetings are subject to call by the Mayor, City Manager, or three members of the City Council with written notice to the City Secretary. The time, place, and purpose will be stated in each instance. Ordinarily, no official Council action will be taken at a work session meeting.

### **SECTIONS 2. AGENDAS**

The following procedures relate to the agenda for meetings of the Council.

- A. The Mayor, working with the City Manager, will determine what items of business should come before the Council. If, at a meeting of the Council, a member of the Council (i.e., the Mayor and each Council member) or the public inquires about a subject for which notice has not been given as required by law, only the following may be provided unless otherwise allowed by law: (1) a statement of specific factual information given in response to the inquiry, or (2) a recitation of existing policy in response to the inquiry. Unless otherwise allowed by law, any deliberation of or decision about the subject of such inquiry shall be limited to a proposal to place the subject on the agenda for a subsequent meeting.
- B. Any Council member may ask the Mayor to place an item on the agenda for discussion.
- C. An item may be placed on the agenda at the request of two or more Council members. The Council members requesting the agenda item may present or participate in the presentation of the item at the meeting. Any Town staff assistance should be requested through the City Manager's Office. Such agenda items must reach the City Secretary's office at Town Hall by 1:00 p.m., Tuesday, of the week preceding the meeting for which the request is made.
- D. Any member of the Town staff wishing to have an item placed on the agenda shall submit that item to the City Manager's Office for approval. The City Manager may establish procedures for submission of routine items without his approval.

E. The agenda packets for all Regular Meetings will be delivered electronically by Town staff to members of the Council no later than the Thursday preceding the meetings.

F. The City Secretary's office is responsible for seeing that notices for all meetings of the Council comply with the Open Meetings Law.

### SECTION 3. COUNCIL MEETING PROCEDURES

The Council will use the following procedures as a general guide for parliamentary procedure, and may consult Robert's Rules of Order as a guide in instances not addressed by these procedures.

A. The Mayor shall be the presiding officer at all meetings. The Mayor Pro-Tempore shall preside at meetings in the absence of the Mayor, and the Deputy Mayor Pro-Tempore shall preside at meetings in the absence of the Mayor Pro-Tempore.

B. The Mayor shall have a voice in all matters before the Council and may vote on all matters.

C. When an item is presented to the Council, the Mayor (or presiding officer) shall recognize the appropriate individual to present the item. When two or more members are presenting an item, the Mayor shall choose which member is to speak first.

D. The Mayor (or presiding officer) shall preserve order and shall require Council members engaged in debate to limit discussion to the question under consideration.

E. The Mayor (or presiding officer) will ~~encourage all Council members to participate in discussion by giving~~ all members of the Council an ~~equal~~ opportunity to speak on an item.

F. Should a conflict arise between Council members, the Mayor (or presiding officer) shall serve as the mediator.

G. The Mayor shall be recognized as head of the Town government for all ceremonial purposes and by the governor for purposes of military law but shall have no administrative duties. If the Mayor is absent, the Mayor Pro-Tempore, and in the absence of the Mayor Pro-Tempore the Deputy Mayor Pro-Tempore, shall be so recognized.

H. Members of the Council shall confine their remarks to the item under consideration and shall avoid references to personality, integrity, or motives of any other members of the Council or Town staff members.

I. Any Council member may ask the Mayor (or presiding officer) to enforce the procedures established by the Council. Should the Mayor (or presiding officer) fail to do so, a majority of the Council may direct him/her to enforce the procedures.

#### SECTION 4. CODE OF CONDUCT FOR MAYOR AND COUNCIL MEMBERS

A. During Council meetings, Members of the Council shall preserve order and decorum, shall not interrupt or delay proceedings, and shall not refuse to obey the orders of the Mayor (or presiding officer) or the rules of the Council. Members of the Council shall demonstrate respect and courtesy to each other, Town staff members, and citizens appearing before the Council. Members of the Council shall refrain from rude and derogatory remarks.

B. The Mayor and Council members should comply with the Town's Code of Ethics (included in Chapter 2, Article III, Division 2 of the Town's Code of Ordinances and attached hereto as Appendix A) and with all conflict of interest laws.

C. In accordance with the Town's Code of Ethics and with applicable law, the Mayor and Council members shall abstain from participating in or voting on items in which they have a conflict of interest as set forth in the Code of Ethics or applicable law. If the Mayor or a Council member has such a conflict of interest, he or she shall file a "Conflict of Interest Affidavit" with the City Secretary's office. Upon introduction of the agenda item in which the Mayor or Council member has a conflict of interest, the Mayor or Council member should announce that he or she has a conflict of interest, and must refrain from participation in or voting on the agenda item, but shall not be required to leave the meeting room.

#### SECTION 5. CITIZEN PARTICIPATION AT MEETINGS

A. The Council is, in certain instances (e.g., changes in zoning), required to hold public hearings. If an item is identified on the agenda of a Council meeting as a public hearing, persons attending the Council meeting will be given the opportunity to speak regarding the item after being recognized by the Mayor (or presiding officer). The Mayor (or presiding officer) may set time limits on persons who speak at a public hearing.

B. Except as set forth in paragraph A of this Section, as a general rule, persons attending a meeting of the Council may not participate in the discussions of the Council.

#### SECTION 6. COUNCIL AND STAFF RELATIONS

A. Members of the Council should attempt to ask questions to the City Manager about the Council agenda packet issued for a Council meeting prior to the meeting. This will allow the Town staff time to respond to the Council member's questions and, if necessary, to provide additional information to all members of the Council.

B. The City Manager shall designate the appropriate Town staff member to address each agenda item and shall see that each presentation informs the Council on the issues

which require Council action. The presentations should be professional and timely, and should list options available for resolving any issue.

C. The City Manager is directly responsible for providing information to all members of the Council concerning any inquiries by a specific member of the Council. Should the City Manager find his or his staff's time being dominated by a single member, he should inform the Mayor of the concern.

D. Any conflicts between the staff and the Council will be addressed by the Mayor and the City Manager.

E. The City Manager is responsible for the professional and ethical behavior of himself and his staff. He is also responsible for seeing that his staff remains educated and informed on the issues facing municipal government.

F. All members of the Council and Town staff members shall show respect and courtesy to each other and citizens at all times.

G. The City Manager is responsible for seeing that all newly (first time) elected members of the Council are provided with a thorough orientation on Town staff procedures, municipal facilities, and other information of interest to municipal officials.

#### SECTION 7. COUNCIL AND MEDIA RELATIONS

A. Agenda packets shall be provided upon request to all interested news media in advance of the Council meetings.

B. Responses to media inquiries concerning Town matters will be made as determined by the Mayor (or Mayor Pro-Tempore in the absence of the Mayor, or in the absence of the Mayor Pro-Tempore, the Deputy Mayor Pro-Tempore) and the City Manager.

## **APPENDIX A**

## **CITY COUNCIL PROCEDURES**

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E. The Mayor (or presiding officer) will give all members of the Council a full opportunity to speak on an item.

F. Should a conflict arise between Council members, the Mayor (or presiding officer) shall serve as the mediator.

G. The Mayor shall be recognized as head of the Town government for all ceremonial purposes and by the governor for purposes of military law but shall have no administrative duties. If the Mayor is absent, the Mayor Pro-Tempore, and in the absence of the Mayor Pro-Tempore the Deputy Mayor Pro-Tempore, shall be so recognized.

H. Members of the Council shall confine their remarks to the item under consideration and shall avoid references to personality, integrity, or motives of any other members of the Council or Town staff members.

I. Any Council member may ask the Mayor (or presiding officer) to enforce the procedures established by the Council. Should the Mayor (or presiding officer) fail to do so, a majority of the Council may direct him/her to enforce the procedures.

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B. The Mayor and Council members should comply with the Town's Code of Ethics (included in Chapter 2, Article III, Division 2 of the Town's Code of Ordinances and attached hereto as Appendix A) and with all conflict of interest laws.

C. In accordance with the Town's Code of Ethics and with applicable law, the Mayor and Council members shall abstain from participating in or voting on items in which they have a conflict of interest as set forth in the Code of Ethics or applicable law. If the Mayor or a Council member has such a conflict of interest, he or she shall file a "Conflict of Interest Affidavit" with the City Secretary's office. Upon introduction of the agenda item in which the Mayor or Council member has a conflict of interest, the Mayor or Council member should announce that he or she has a conflict of interest, and must refrain from participation in or voting on the agenda item, but shall not be required to leave the meeting room.

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B. Except as set forth in paragraph A of this Section, as a general rule, persons attending a meeting of the Council may not participate in the discussions of the Council.

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B. The City Manager shall designate the appropriate Town staff member to address each agenda item and shall see that each presentation informs the Council on the issues which require Council action. The presentations should be professional and timely, and should list options available for resolving any issue.

C. The City Manager is directly responsible for providing information to all members of the Council concerning any inquiries by a specific member of the Council. Should the City Manager find his or his staff's time being dominated by a single member, he should inform the Mayor of the concern.

D. Any conflicts between the staff and the Council will be addressed by the Mayor and the City Manager.

E. The City Manager is responsible for the professional and ethical behavior of himself and his staff. He is also responsible for seeing that his staff remains educated and informed on the issues facing municipal government.

F. All members of the Council and Town staff members shall show respect and courtesy to each other and citizens at all times.

G. The City Manager is responsible for seeing that all newly (first time) elected members of the Council are provided with a thorough orientation on Town staff procedures, municipal facilities, and other information of interest to municipal officials.

#### SECTION 7. COUNCIL AND MEDIA RELATIONS

A. Agenda packets shall be provided upon request to all interested news media in advance of the Council meetings.

B. Responses to media inquiries concerning Town matters will be made as determined by the Mayor (or Mayor Pro-Tempore in the absence of the Mayor, or in the absence of the Mayor Pro-Tempore, the Deputy Mayor Pro-Tempore) and the City Manager.

## **APPENDIX A**

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- B. Special Meetings are subject to call by the Mayor, City Manager, or three members of the City Council with written notice to the City Secretary. ~~Except in unusual circumstances these~~ These meetings will be held at Town Hall unless otherwise posted, at a stated time.
- C. ~~Workshop~~ Work Session Meetings are subject to call by the Mayor, City Manager, or three members of the City Council with written notice to the City Secretary. The time, place, and purpose will be stated in each instance. Ordinarily, no official Council action will be taken at a ~~workshop~~ work session meeting.

### SECTIONS 2. AGENDAS

The following procedures relate to the ~~Agenda~~ agenda for meetings of the Council.

- A. The Mayor, working with the City Manager, will determine what items of business should come before the Council. ~~An item not appearing on the agenda shall not be taken up for discussion during a Meeting without the consent of a majority of the Councilmembers present~~ If, at a meeting of the Council, a member of the Council (i.e., the Mayor and each Council member) or the public inquires about a subject for which notice has not been given as required by law, only the following may be provided unless otherwise allowed by law: (1) a statement of specific factual information given in response to the inquiry, or (2) a recitation of existing policy in response to the inquiry. Unless otherwise allowed by law, any deliberation of or decision about the subject of such inquiry shall be limited to a proposal to place the subject on the agenda for a subsequent meeting.
- B. Any ~~Councilmember~~ Council member may ask the Mayor to place an item on the agenda for discussion.
- C. An item may be placed on the ~~Agenda~~ agenda at the request of two or more ~~Councilmembers~~ Council members. The ~~Councilmembers~~ Council members requesting the agenda item ~~will be responsible for~~ may present or participate in the presentation of the item at the meeting. Any Town staff assistance should be requested through the City Manager's ~~office~~ Office. ~~Agenda~~ Such agenda items must reach the City Secretary's office at Town Hall by 1:00 p.m., Tuesday, of the week preceding ~~Regular Council Meetings~~ the meeting for which the request is made.

D. Any member of the ~~city~~Town staff wishing to have an item placed on the agenda shall submit that item to the City Manager's ~~office~~Office for approval. The City Manager may establish procedures for submission of routine items without his approval.

E. The agenda packets for all Regular Meetings will be delivered electronically by Town staff ~~on the Friday afternoon~~to members of the Council no later than the Thursday preceding the meetings.

F. The City Secretary's office is responsible for seeing that notices for all meetings of the Council comply with the Open Meetings Law.

### SECTION 3. COUNCIL MEETING PROCEDURES

The Council will use the following procedures ~~set forth in Robert's Rules of Order~~ as a general guide for parliamentary procedure, and may consult Robert's Rules of Order as a guide in instances not addressed by these procedures.

A. The Mayor shall be the presiding officer at all meetings. The Mayor Pro-~~Tem~~, ~~or~~Tempore shall preside at meetings in the absence of the Mayor, and the Deputy ~~mayor~~Mayor Pro-~~Tem~~Tempore shall ~~presiding~~preside at meetings in ~~his/her~~the absence of the Mayor Pro-Tempore.

B. The Mayor shall have a voice in all matters before the Council and ~~shall~~may vote on all matters.

C. When an item is presented to the Council, the Mayor (or presiding officer) shall recognize the appropriate individual to present the item. When two or more members are presenting an item, the Mayor shall choose which member is to speak first.

D. The Mayor (or presiding officer) shall preserve order and shall require ~~Councilmembers~~Council members engaged in debate to limit discussion to the question under consideration.

E. The Mayor (or presiding officer) will ~~encourage all Councilmembers to participate in discussion by giving each member an equal~~give all members of the Council a full opportunity to speak on an item.

F. Should a conflict arise between ~~Councilmembers~~Council members, the Mayor (or presiding officer) shall serve as the mediator.

G. The Mayor ~~is the spokesperson~~shall be recognized as head of the Town government for ~~the Council on all matters. If~~all ceremonial purposes and by the governor for purposes of military law but shall have no administrative duties. If the Mayor is absent, the Mayor Pro-~~Tem~~or~~Tempore, and in the absence of the Mayor Pro-Tempore~~the Deputy Mayor Pro-~~Tem~~Tempore, shall ~~serve as spokesperson~~be so recognized.

H. ~~Councilmembers~~Members of the Council shall confine their remarks to the item under consideration and shall avoid references to personality, integrity, or motives of any other ~~Councilmembers or staffmembers~~members of the Council or Town staff members.

I. Any ~~Councilmember~~Council member may ask the Mayor (or presiding officer) to enforce the procedures established by the Council. Should the Mayor (or presiding officer) fail to do so, a majority ~~vote~~ of the Council ~~shall require~~may direct him/her to enforce the procedures.

#### SECTION 4. CODE OF CONDUCT FOR MAYOR AND ~~COUNCILMEMBERS~~COUNCIL MEMBERS

A. During Council meetings, ~~Councilmembers~~Members of the Council shall preserve order and decorum, shall not interrupt or delay proceedings, and shall not refuse to obey the orders of the Mayor (or presiding officer) or the rules of the Council. ~~Councilmembers~~Members of the Council shall demonstrate respect and courtesy to each other, ~~city~~Town staff members, and citizens appearing before the Council. ~~Councilmembers~~Members of the Council shall refrain from rude and derogatory remarks.

B. The Mayor and ~~Councilmembers should not use their position to secure special privileges, and should avoid situations that could cause them to have any bias or partiality on a question before the Council.~~Council members should comply with the Town's Code of Ethics (included in Chapter 2, Article III, Division 2 of the Town's Code of Ordinances and attached hereto as Appendix A) and with all conflict of interest laws.

C. ~~The Mayor and Councilmembers may~~In accordance with the Town's Code of Ethics and with applicable law, the Mayor and Council members shall abstain from participating in or voting on items ~~on~~in which ~~they feel~~ they have a conflict of interest as set forth in the Code of Ethics or applicable law. If the Mayor or a ~~Councilmember has a conflict which qualifies under the state statute for~~Council member has such a conflict of interest, he or she shall file a "Conflict of Interest Affidavit" with the City Secretary's office. Upon introduction of the agenda item in which the Mayor or Council member has a conflict of interest, the Mayor or ~~Councilmember~~Council member should announce that he or she has a conflict of interest, and ~~should~~must refrain from ~~discussion of~~participation in or voting on the agenda item ~~and from voting~~, but shall not be required to leave the meeting room.

#### SECTION 5. CITIZEN PARTICIPATION AT MEETINGS

A. The ~~Mayor is~~Council is, in certain instances (e.g., changes in zoning), required to hold public hearings ~~on zoning cases, adoption of the ad valorem tax rate, and assessments of property owners for public improvements. As a courtesy, the Mayor may choose to hold a public hearing on any item before the Council. Citizens.~~If an item is identified on the agenda of a Council meeting as a public hearing, persons attending the

Council meeting will be given the opportunity to speak ~~for or against an~~regarding the item after being recognized by the Mayor (or presiding officer). The Mayor (or presiding officer) may set time limits on persons who speak at a public hearing.

B. ~~As~~Except as set forth in paragraph A of this Section, as a general rule, ~~citizens~~persons attending a meeting of the Council may not participate in the discussions of the Council ~~at Workshop Sessions.~~

## SECTION 6. COUNCIL AND STAFF RELATIONS

A. ~~Councilmembers~~Members of the Council should attempt to ask questions to the City Manager about the Council ~~Agenda~~agenda packet ~~to the City Manager~~issued for a Council meeting prior to the meeting. This will allow the Town staff time to respond to the ~~Councilmember's concern~~Council member's questions and, if necessary, to provide additional information to all ~~Councilmembers~~members of the Council.

B. The City Manager shall designate the appropriate ~~staffmember~~Town staff member to address each agenda item and shall see that each presentation informs the Council on the issues which require Council action. The presentations should be professional and timely, and should list options available for resolving ~~the~~any issue.

C. The City Manager is directly responsible for providing information to all ~~Councilmembers~~members of the Council concerning any inquiries by a specific ~~Councilmember~~member of the Council. Should the City Manager find his or his staff's time being dominated by a single member, he should inform the Mayor of the concern.

D. Any conflicts between the staff and the Council will be addressed by the Mayor and the City Manager.

E. The City Manager ~~will be held~~is responsible for the professional and ethical behavior of himself and his staff. He is also responsible for seeing that his staff remains educated and informed on the issues facing municipal government.

F. All ~~Councilmembers and staffmembers~~members of the Council and Town staff members shall show respect and courtesy to each other and citizens at all times.

G. The City Manager is responsible for seeing that all newly- ~~(first time)~~ elected ~~Councilmembers~~members of the Council are provided with a thorough orientation on Town staff procedures, municipal facilities, and other information of interest to municipal officials.

## SECTION 7. COUNCIL AND MEDIA RELATIONS

A. Agenda packets shall be provided upon request to all interested news media in advance of the Council meetings.



B. Responses to media inquiries concerning Town matters will be made as determined by the Mayor (or Mayor Pro-Tempore in the absence of the Mayor, or in the absence of the Mayor Pro-Tempore, the Deputy Mayor Pro-Tempore) and the City Manager.

~~B. The City Manager, or his designated representative, is the spokesman for any staff presentation on the agenda. The Mayor, Mayor Pro Tem, or Deputy Mayor Pro Tem is the spokesman for any Council information pertaining to issues on the agenda.~~

## APPENDIX A

Document comparison by Workshare Professional on Wednesday, October 05, 2011  
3:01:13 PM

| Input:        |  |
|---------------|--|
| Document 1 ID | PowerDocs://CTDALLAS/1423543/1                               |
| Description   | CTDALLAS-#1423543-v1-ADDISON-City_Council_rules_of_Procedure |
| Document 2 ID | PowerDocs://CTDALLAS/1423543/6                               |
| Description   | CTDALLAS-#1423543-v6-ADDISON-City_Council_rules_of_Procedure |
| Rendering set | standard   |

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| <u>Insertion</u>          |  |
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|                | Count |
| Insertions     | 90    |
| Deletions      | 70    |
| Moved from     | 1     |
| Moved to       | 1     |
| Style change   | 0     |
| Format changed | 0     |
| Total changes  | 162   |

## Council Agenda Item: #R 2a

**AGENDA CAPTION:**

Approval of Minutes for the September 27, 2011 Regular Council Meeting.

**FINANCIAL IMPACT:**

N/A

**BACKGROUND:**

N/A

**RECOMMENDATION:**

N/A

**COUNCIL GOALS:**

N/A

**ATTACHMENTS:**

Description:

☐ [September 27 Minutes](#)

Type:

Cover Memo

# **OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL WORK SESSION**

September 27, 2011

6:00 PM - Town Hall

Addison Town Hall, 5300 Belt Line, Dallas, TX 75254

Upstairs Conference Room

Council Members Present:

Arfsten, Clemens, DeFrancisco, Lay, Meier, Mellow, Resnik

Absent:

None

## **Work Session**

Item #WS1 - Overview of Economic Development Department's  
Business Retention & Expansion Report.

Item #WS2 - Presentation and discussion regarding an update on the  
Texas Municipal Retirement System (TMRS).

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Mayor-Todd Meier

Attest:

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City Secretary-Chris Terry

# **OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL REGULAR MEETING**

September 27, 2011

6:00 PM - Town Hall

Addison Town Hall, 5300 Belt Line, Dallas, TX 75254

Chris Terry, 9/16/2011, 5:00 PM

Council Members Present:

Arfsten, Clemens, DeFrancisco, Lay, Meier, Mellow, Resnik

Absent:

None

## **REGULAR MEETING**

Item #R1 - Announcements and Acknowledgements regarding Town and Council Events and Activities

The following employees were introduced: Phil Kagarice, Public Works; and Zach Crase, Fire Department.

There was no action taken.

Item #R2 - Consent Agenda

#2a - Approval of Minutes for the September 13, 2011 Regular Council Meeting.

A motion to Approve was made by Council Member Blake Clemens.

The motion was seconded by Council Member Chris DeFrancisco.

The motion result was: Passed

Voting Aye: Arfsten, Clemens, DeFrancisco, Lay, Meier, Mellow, Resnik

Voting Nay: None

#2b - Approval of a resolution that authorizes the Town to designate

representatives that can transact business with the TexPool local government investment pool.

Resolution R11-016 was approved.

A motion to Approve was made by Council Member Blake Clemens.

The motion was seconded by Council Member Chris DeFrancisco.

The motion result was: Passed

Voting Aye: Arfsten, Clemens, DeFrancisco, Lay, Meier, Mellow, Resnik

Voting Nay: None

#2c - Approval of an agreement for professional services with Waters-Oldani Executive Recruitment of The Waters Consulting Group, Inc. to conduct a recruitment process leading to the hiring of a Chief Financial Officer for the Town of Addison.

A motion to Approve was made by Council Member Blake Clemens.

The motion was seconded by Council Member Chris DeFrancisco.

The motion result was: Passed

Voting Aye: Arfsten, Clemens, DeFrancisco, Lay, Meier, Mellow, Resnik

Voting Nay: None

#2d - Approval of the renewal of an Interlocal Agreement with Dallas County to allow the Town of Addison to continue participation in the Dallas County Household Hazardous Waste Network to provide for collection and disposal of household hazardous waste.

A motion to Approve was made by Council Member Blake Clemens.

The motion was seconded by Council Member Chris DeFrancisco.

The motion result was: Passed

Voting Aye: Arfsten, Clemens, DeFrancisco, Lay, Meier, Mellow, Resnik

Voting Nay: None

#2e - Approval of a forty five (45) day extension of a marketing collateral agreement with Krause Advertising in the amount of \$27,520.

A motion to Approve was made by Council Member Blake Clemens.  
The motion was seconded by Council Member Chris DeFrancisco.  
The motion result was: Passed

Voting Aye: Arfsten, Clemens, DeFrancisco, Lay, Meier, Mellow,  
Resnik

Voting Nay: None

Item #R3 - Recognition of Tom Braun for his service towards the construction of George Bush Elementary.

Item #R4 - Presentation, discussion and consideration of approval of an ordinance amending the Town's investment policy set forth in Chapter 2, Article IV, Division 3 of the Town's Code of Ordinances.

Marisa Perry spoke regarding this item.

Ordinance 011-060 was approved.

A motion to Approve was made by Council Member Bruce Arfsten.  
The motion was seconded by Council Member Neil Resnik.  
The motion result was: Passed

Voting Aye: Arfsten, Clemens, DeFrancisco, Lay, Meier, Mellow,  
Resnik

Voting Nay: None

Item #R5 - Presentation, discussion and consideration of approval of a resolution adopting the Town of Addison Investment Strategy for FY 2012.

Marisa Perry spoke regarding this item.



Resolution R11-017 was approved.

A motion to Approve was made by Council Member Neil Resnik.  
The motion was seconded by Council Member Chris DeFrancisco.  
The motion result was: Passed  
Voting Aye: Arfsten, Clemens, DeFrancisco, Lay, Meier, Mellow,  
Resnik  
Voting Nay: None

Item #R6 - Presentation by Tom Lamberth, UDR, regarding the progress of the Vitruvian Park Development.

Tom Lamberth, UDR, spoke regarding this item.

There was no action taken.

Item #R7 - Discussion of and consideration of approval of a proposed scope of service in the amount of \$35,000 for the Metrocrest Chamber of Commerce.

A motion to Approve was made by Council Member Blake Clemens.  
The motion was seconded by Council Member Neil Resnik.  
The motion result was: Passed  
Voting Aye: Arfsten, Clemens, DeFrancisco, Lay, Meier, Mellow,  
Resnik  
Voting Nay: None

Item #R8 - Discussion of possible issuance of General Obligation Refunding & Improvement Bonds, Series 2011.

Randy Moravec and David Medanich, First Southwest Asset Management, spoke regarding this item.

There was no action taken.

Item #R9 - Presentation, discussion, and consideration of approval of

an ordinance amending the Town's financial policies set forth in Chapter 2, Article IV, Division 2 of the Town's Code of Ordinances.

Randy Moravec spoke regarding this item.

Ordinance 011-061 was approved.

A motion to Approve was made by Council Member Kimberly Lay.

The motion was seconded by Council Member Bruce Arfsten.

The motion result was: Passed

Voting Aye: Arfsten, Clemens, DeFrancisco, Lay, Meier, Mellow, Resnik

Voting Nay: None

Item #R10 - Discussion and consideration of approval of a resolution affirming the appointment of a member of the DART Board of Directors.

Item was deferred until a future meeting.

There was no action taken.

Item #R11 - Discussion and consideration of appointments to the Addison Bond Committee.

Mayor Todd Meier appointed Sai Nori, 4017 Dome.

Council Member Bruce Arfsten appointed Robin Moss, 3918 Dome.

A motion to Approve was made by Mayor Todd Meier.

The motion was seconded by Council Member Bruce Arfsten.

The motion result was: Passed

Voting Aye: Arfsten, Clemens, DeFrancisco, Lay, Meier, Mellow, Resnik

Voting Nay: None

Item #ES1 - Closed (Executive) session of the Addison City Council pursuant to Section 551.087, Texas Government Code, to discuss or deliberate regarding commercial or financial information that the City Council has received from a business prospect or business prospects that the City Council seeks to have locate, stay, or expand in or near the territory of the Town of Addison and with which the City Council is conducting economic development negotiations, and/or to deliberate the offer of a financial or other incentive to such business prospect or business prospects.

Item #R12 - Consideration of any action regarding commercial or financial information that the City Council has received from a business prospect or business prospects that the City Council seeks to have locate, stay, or expand in or near the territory of the Town of Addison and with which the City Council is conducting economic development negotiations, and/or any action regarding the offer of a financial or other incentive to such business prospect or business prospects.

There was no action taken.

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Mayor-Todd Meier

Attest:

---

City Secretary-Chris Terry

## Council Agenda Item: #R 2b

### **AGENDA CAPTION:**

Approval of a Temporary License Agreement providing for the temporary use by the owner of Lot 3, Block B, Vitruvian Park Addition, of a portion of Vitruvian Way and Bella Lane for the installation of underground soil nails as a part of a soil retention system in connection with the construction of improvements on the said property.

### **FINANCIAL IMPACT:**

NA

### **BACKGROUND:**

Attached is a proposed Temporary License Agreement that grants to DCO Addison at Brookhaven LP ("DCO Addison") a temporary license to install soil nails under a portion of Vitruvian Way and Bella Lane. DCO Addison is an affiliate of UDR, Inc., and UDR, Inc. has ownership of and controls it.

DCO Addison has requested the license in order to be able to temporarily install soil nails under the streets to accommodate its construction of improvements on Lot 3, Block B of the Vitruvian Park Addition (see property location on the first page of the Final Plat of the property, attached). The soil nails will help provide temporary shoring for the excavation work to be performed on the property. According to Andres Construction, the soil nails will be below existing utilities in the area. The license is needed for no more than 180 days.

### **RECOMMENDATION:**

Staff recommends approval of the Temporary License Agreement.

### **COUNCIL GOALS:**

N/A

### **ATTACHMENTS:**

Description:

☐ [Temporary License Agreement](#)

☐ [Plat](#)

Type:

Cover Memo

Cover Memo

STATE OF TEXAS           §  
   §  
COUNTY OF DALLAS       §

### TEMPORARY LICENSE AGREEMENT

This Temporary License Agreement ("License" or "Agreement") is made and entered into this 12th day of October, 2011 ("Effective Date") by and between the Town of Addison, Texas ("Licensor" or "Town") and DCO Addison at Brookhaven LP, a Delaware limited partnership ("Licensee") (Licensor and Licensee are sometimes referred to herein together as the "parties" and individually as a "party").

#### Recitals:

1. The Town of Addison, Texas is a home rule city, and owns, controls and maintains a public right-of-way within the Town known as Vitruvian Way.

2. Licensee is the owner of a tract of land within the Town generally located at the southeast corner of the intersection of Vitruvian Way and Bella Lane (a public street) and more particularly described as Lot 3, Block B of the Vitruvian Park Addition as shown on the Final Plat thereof recorded in Instrument #201100123703 of the Official Public Records of Dallas County, Texas (the "Property"). Licensee is an affiliate of UDR, Inc. ("UDR") and UDR has ownership of and controls (i.e. directly possesses the power to direct the management and policies without the consent or approval of any other person or entity) of Licensee (and the same shall be true at all times while this License is in effect).

3. Licensee is in the process of constructing a building and related improvements on the Property (the "Project"). The Project will include the removal of soil from the Property, with the resulting excavation requiring a soil retention system to retain earth abutting the excavation that might, due to the force of gravity and absent the retention system, slide or fall into the excavation. Licensee has proposed to use a soil retention system that includes the use of soil nails on a temporary basis to provide temporary shoring (see the attached Exhibit 1 that describes and depicts the temporary shoring system for the Project ("Temporary Shoring System"). The temporary shoring is needed in areas within the Property that abut the Vitruvian Way and the Bella Lane rights-of-way.

4. The Temporary Shoring System requires that soil nails be temporarily installed underground and within a portion of the Vitruvian Way and the Bella Lane rights-of-way as shown in Exhibit 1. Licensee has requested that Licensor grant to Licensee a temporary license to allow Licensee to install the soil nails, and Licensor has agreed to grant such temporary license to Licensee as set forth in this License.

**NOW, THEREFORE**, for and in consideration of the Ten and No/100 Dollars (\$10.00), the mutual covenants and obligations set forth herein, and other good and valuable consideration, the City and Licensee do hereby agree as follows:

1. Incorporation of premises. The above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

2. Grant of license. Licensor does hereby grant to Licensee a revocable license (“License”) to install (at Licensee’s sole liability, cost and expense) soil nails underground and within a portion of the rights-of-way of Vitruvian Way and Bella Lane as depicted and described in, and in accordance with, the attached Exhibit 1 (the “Rights-of-Way”). The License may be used by Licensee, its employees and contractors subject to and in accordance with the terms and conditions set forth in this Agreement and solely in connection with the Project as described in the Recitals, above.

Prior to any work pursuant to this License, Licensee shall give to Licensor at least ten (10) days prior written notice of such work, including the specific dates and times for such work, and the type of work to be performed. In addition, Licensee shall promptly give to Licensor in writing, upon Licensor’s request, such other information regarding the work and the use of this License as Licensor may request. Licensor shall have the right to inspect any work performed under this License. Promptly following the installation of the soil nails, Licensee shall give Licensor written notice of such installation (the “Installation Notice”). The Installation Notice shall include a drawing or other document, sealed by a registered professional engineer licensed by the State of Texas, that shows and depicts pertinent and relevant information regarding the soil nails and their actual “as built” installation, including their location, extent, and depth and, if true, a certification to the effect that the installation of the soil nails is substantially in accordance with Exhibit 1.

Upon completion of the Project (or upon termination of this License, if the same is earlier than completion of the Project), but in no event more than one hundred eighty (180) days following the Effective Date, Licensee shall return the Rights-of-Way to the same condition as existed prior to the commencement of activities described herein, and this License shall automatically terminate (subject, however, to certain provisions of this License that shall survive the termination as set forth herein, including Licensee’s indemnity obligations set forth in Section 8, below). Provided, however that the soil nails, if installed under and within the Rights-of-Way substantially in accordance with Exhibit 1 (e.g., at the depths and locations shown in Exhibit 1), may remain in place as installed; if the soil nails were not installed substantially in accordance with Exhibit 1, as reasonably determined by Licensor, Licensor may require, not later than 30 days following Licensor’s receipt of the Installation Notice, that they be removed at Licensee’s sole cost and expense (and if Licensor does not receive the Installation Notice promptly following the installation of the soil nails, Licensor may require at any time that Licensee remove, at Licensee’s sole cost and expense, the soil nails not installed substantially in accordance with Exhibit 1 be removed) (such right of Licensor to have the soil nails removed shall survive the termination or expiration of this License). Upon the request of Licensor, Licensee shall execute a memorandum of termination of this License, which memorandum may, in Licensor’s sole discretion, be recorded in the the official public records of Dallas County, Texas.

The License hereby granted is subject to and shall be used by Licensee in accordance with all laws, Charter, ordinances, orders, rules, permits, regulations, standards, and codes (including, without limitation, the building code) of the City and with any and all law of any

other federal, state or local governmental entity or agency having jurisdiction over the Rights-of-Way (collectively, "Laws"), and the terms and conditions of this License.

Licensee agrees that Licensee will be using the Rights-of-Way in its "**AS IS**" condition, **WITH ALL FAULTS AND AT LICENSEE'S OWN RISK**, with any and all latent and patent defects and without any warranty, express or implied, including without limitation, any warranty of title or fitness for a particular purpose, all such warranties being expressly disclaimed by Grantor. Licensee acknowledges and stipulates that Licensee is not relying on any representation, statement, or warranties made by Licensor or anyone acting on Licensor's behalf concerning this License or the Rights-of-Way.

3. Further Conditions.

(i) All work pertaining to this License, including design, installation, construction, maintenance, repair, and removal, shall be performed in a first class, workmanlike manner and in compliance with all applicable Laws (including any Laws requiring the securing of building, excavation or other permits).

(ii) All work performed under this License shall be free and clear of liens, claims, security interests or encumbrances, and Licensee shall keep the Rights-of-Way free and clear of all liens, claims, security interests or encumbrances. Licensee shall promptly pay and discharge all costs, expenses, claims for damages, liens, claims, security interests or encumbrances, and any and all other liabilities and obligations which arise in connection with this License.

(iii) Approval by Licensor of the Temporary Shoring System set forth in Exhibit 1, any plans or processes related to the work, or any work contemplated by this License shall and does not constitute a warranty or representation of any nature or kind whatsoever by Licensor, including, without limitation, any warranty or representation that the same is safe or conforms to federal, state and/or local Laws.

(iv) All work in connection with this License shall be to Licensor's satisfaction and performed and conducted at such times and in such manner as not to interfere with or to create a hazard to the operation, maintenance, and/or use of the Rights-of-Way or any other street, roadway, or other right-of-way or property of Licensor.

(v) In exercising Licensee's rights hereunder, Licensee shall use commercially best efforts to prevent damage, destruction, or change to the Rights-of-Way and any other property of Licensor and any property of any third person, and personal injury, harm or death to any person. If in exercising Licensee's rights hereunder, Licensee (or its employees, agents or contractors) shall cause, directly or indirectly, (i) any damage, destruction, or change to the Rights-of-Way or to any other property of the Licensor or to any property or any third person, or (ii) any personal injury, harm or death to any person, Licensee shall be responsible for all of the same and shall promptly, upon Licensor's direction, (y) repair, restore, or replace such Rights-of-Way or other property (or pay for the cost of such repair, restoration, and/or replacement), and (z) compensate persons for such personal injury, harm, or death.



(vi) Upon written notice from Licensor that a change or correction, maintenance or repair, to or in connection with the work performed under this License is needed or required, Licensee shall promptly perform the same, and if Licensee fails to do so, Licensor shall have the right (in addition to any other rights of Licensor provided for herein or at law, in equity, or otherwise), without liability to Licensee (or its employees, agents and contractors) to perform the same, the cost of which shall be borne by Licensee (and promptly payable by Licensee upon Licensor's demand).

(vii) If required by Licensor in its use of the Rights-of-Way or any other or Licensor's property, Licensee, at Licensee's sole cost and expense, shall reconstruct, relocate, alter, or remove the work (e.g., the installation, modification or removal of soil nails underground and within the Rights-of-Way) performed by or for Licensee under or pursuant to this License. In the event that Licensee fails to relocate, reconstruct, alter or remove such work as directed by Licensor within a reasonable length of time (as determined by the City's Director of Public Works), the City shall give Licensee written notification of such failure; if Licensee fails to cure such failure within a reasonable length of time thereafter (but in any event not later than five (5) days after the date of such notice), Licensor shall have the right, without liability to Licensee (or to any of Licensee's employees, agents, or contractors), to reconstruct, relocate, alter, or remove such work, and Licensee shall reimburse Licensor for all costs of such reconstruction, relocation, alteration, or removal.

4. Term. Subject to the terms and conditions of this License (including the termination provisions hereof), this License shall commence on the Effective Date and thereafter continue in effect until the earlier of (i) the date of completion of the work (e.g., the installation or modification of soil nails located underground and within the Rights-of-Way), and the filling in or such other work as may be necessary or prudent to return the Right-of-Way to the condition that they were in prior to such work, or (ii) April 9, 2012.

5. Non-exclusive license. This License is not exclusive, and is subject and subordinate to: (a) any existing street or right-of-way utility (including, without limitation, electric, gas, and telecommunications utilities), drainage or communication facility located in, on, under or upon the Rights-of-Way or any other property or Licensor; (b) all vested rights presently owned by any utility or communication company; (c) any existing license, lease, easement, or other interest heretofore granted by the City, whether recorded or not; and (d) the terms and conditions of this License Agreement, and (e) all Laws.

6. Design, construction, maintenance, replacement, and relocation.

(a) All design, construction, installation, replacement, removal, operation and maintenance by or for Licensee (or its employees, agents or contractors) under this License shall be performed and done in accordance with commercially acceptable best practices in Dallas County, Texas at the time thereof, and shall be performed and done in such a manner so as not to interfere with or create a hazard to the operation, maintenance, and use of the Rights-of-Way or any other property of Licensor or the property of any third person.

(b) All work by or for Licensee under this License shall be maintained by Licensee at all times in a safe, neat and good physical condition. Prior to instituting any such work, including but not limited to installation, repair, maintenance, or removal, Licensee shall secure



from Licensors any necessary permits, including building and right-of-way permits. Licensors shall be the sole judge of the quality of such work, and upon written notice from the City, by and through the City's Director of Development or the said Director's designee, stating in general terms how and in what manner maintenance, repair or removal is required, Licensee shall promptly perform the same. If Licensee fails to do so, the City shall have the right (in addition to any other rights of the City provided for herein), without liability to Licensee (or its employees, agents and contractors) to perform such maintenance, removal, repair or removal, the cost of which shall be borne by Licensee (and promptly payable by Licensee upon Licensors demand).

(c) Licensors shall have the right to require Licensee to adapt or conform any work performed by or for Licensee pursuant to or in connection with this License, or to alter, relocate, change, or remove the same, to enable Licensors to use, or to use with greater convenience, the Rights-of-Way or any other property of Licensors. In the event Licensee has not performed such adaptation, conformance, alteration, relocation, change, or removal as directed by Licensors within five (5) days from date of receipt of written notice from Licensors, Licensors shall have the right (in addition to any other rights of the City provided for herein), without liability to Licensee (or its employees, agents and contractors), to cause to be performed such adaptation, conformance, alteration, relocation, change, or removal, and Licensee shall reimburse Licensors for all costs incurred by Licensors for the same (and such amount shall be payable by Licensee upon Licensors demand).

## 7. Insurance.

A. At all times in connection with this License, Licensee shall purchase and maintain in a company or companies lawfully authorized to do business in Texas (and shall require each of its contractors who may utilized the rights granted in this License) such insurance coverages as set forth below:

1. Commercial General Liability insurance at minimum combined single limits of \$2,000,000 per-occurrence and \$5,000,000 general aggregate for bodily injury and property damage, which coverage shall include products/completed operations (\$2,000,000 products/ completed operations aggregate), and XCU (Explosion, Collapse, Underground) hazards. Coverage for products/completed operations must be maintained for at least two (2) years after the construction work has been completed. Coverage must be amended to provide for an each-project aggregate limit of insurance. An alternative would be to have separate limits for all lines of General Liability coverage for each project.

B. With reference to the foregoing insurance requirement, Licensee (and its contractors) shall specifically endorse applicable insurance policies as follows:

1. The Town of Addison, Texas shall be named as an additional insured with respect to General Liability.

2. All liability policies shall contain no cross liability exclusions or insured versus insured restrictions applicable to the claims of the Town of Addison.

3. A waiver of subrogation in favor of the Town of Addison, Texas, its officers, employees, and agents shall be contained in each policy required herein.
4. All insurance policies shall be endorsed to require the insurer to immediately notify the Town of Addison, Texas of any material change in the insurance coverage.
5. All insurance policies shall be endorsed to the effect that the Town of Addison, Texas will receive at least sixty (60) days' notice prior to cancellation or non-renewal of the insurance.
6. All insurance policies, which name the Town of Addison, Texas as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.
7. Required limits may be satisfied by any combination of primary and umbrella liability insurances.
8. Licensee (and its contractors) may maintain reasonable and customary deductibles.
9. Insurance must be purchased from insurers that are financially acceptable to Licensors and licensed to do business in the State of Texas.

All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent, delivered to Licensee and Licensors prior to the commencement of any work under or pursuant to this License, and shall:

1. List each insurance coverage described and required herein. Such certificates will also include a copy of the endorsements necessary to meet the requirements and instructions contained herein.
2. Specifically set forth the notice-of-cancellation or termination provisions to the Town of Addison.

Upon request, Licensee shall furnish the Town of Addison with complete copies of all insurance policies (including those policies of Licensee's contractors) certified to be true and correct by the insurance carrier.

8. ***Licensee's Indemnity Obligation.*** Licensee covenants and agrees to FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS the Town of Addison, Texas and the elected officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas, individually or collectively, in both their official and private capacities (each an "Addison Person" and collectively the "Addison Persons"), from and against any and all costs, claims, liens, harm, damages, losses, expenses, fees, fines, penalties, proceedings, judgments, actions, demands, causes of action, liability, and suits, of any kind and nature whatsoever made upon or incurred by any Addison Person, whether directly or

indirectly, (the “Claims”), that arise out of, result from, or relate to: (1) the design and construction of the work or activities described in or contemplated by this License (e.g., the installation, maintenance, repair, and removal of soil nails), (2) the use of the Rights-of-Way by Licensee (and its employees, agents, and contractors), (3) representations or warranties by Licensee under this License, and/or (4) any other act or omission under or in performance of or in connection with this License by Licensee, or any owner, officer, director, manager, employee, agent, representative, consultant, contractor, subcontractor, licensee, or concessionaire of Licensee, or any other person or entity for whom Licensee is legally responsible, and their respective owners, officers, managers, employees, directors, agents, contractors, and representatives (collectively, “Licensee Persons”). **SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE OF THE TOWN OF ADDISON, TEXAS OR ANY OTHER ADDISON PERSON, OR BY ANY ACT OR OMISSION OF THE TOWN OF ADDISON, TEXAS OR ANY OTHER ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.**

Licensee shall promptly advise the Town of Addison, Texas in writing of any claim or demand against the Town of Addison, Texas or Licensee or any Licensee Persons related to or arising out of Licensee's (or any of Licensee Persons') activities under this License and shall see to the investigation and defense of such claim or demand at Licensee's sole cost and expense. The Addison Persons shall have the right, at the Addison Persons' option and at the Addison Persons' own expense, to participate in such defense without relieving Licensee of any of its obligations hereunder. The provisions of this defense, indemnity, and hold harmless obligation, and any other defense, indemnity, and hold harmless obligation set forth in this License, shall survive the termination or expiration of this License, and shall constitute and shall be a covenant running with the Property.

9. Termination. This License may be terminated:

(a) by Licensor:

(i) in the event Licensee fails to comply with any of the terms of this License within five (5) days after receipt of written notice by Licensee from Licensor of such failure to comply; or

(ii) Licensee discontinues or abandons the use of the Rights-of-Way for the purposes set forth herein for a continuous period exceeding more ten (10) business days; and

(b) by Licensee upon ten (10) days prior written notice by Licensee to Licensor.

10. Miscellaneous.

(a) *Assignment*. The rights, duties and responsibilities hereunder shall not be assigned, conveyed, pledged, or otherwise transferred by Licensee without the prior written consent of Licensor.

(b) *Force Majeure.* In the event either Licensor or Licensee shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of fire, casualty, strikes, lockouts, labor trouble, inability to procure materials or supplies, failure of power, governmental authority, riots, insurrections, war or other reason of like nature, where such delay, hindrance or prevention of performance shall not be within the reasonable control of the party obligated to perform and not be avoidable by diligence, the party so delayed shall promptly give notice to the other party, and thereupon performance of such act shall be excused for such period of delay.

(c) *Notices.* Any notice provided for herein shall be given by written instrument, personally delivered or sent by certified mail, return receipt requested (postage prepaid), and addressed to:

To the City:

Town of Addison, Texas  
P.O. Box 144  
Addison, Texas 75001  
Attn: City Manager

To Licensee:

DCO Addison at Brookhaven LP  
5430 LBJ Freeway, Suite 1250  
Dallas, Texas 75240  
Attn: Deidra Burns

Such notice shall be deemed delivered upon receipt by the person to whom it is sent.

(d) *Governing Law; Venue.* This License shall be governed by and construed under and in accordance with the laws of the State of Texas, without reference to any choice of law rules of any jurisdiction. All obligations of the parties created by this agreement are performable in Dallas County, Texas. Venue for any action under this License shall lie exclusively in Dallas County, Texas.

(e) *Legal Construction.* The terms and provisions of this License are severable, and in case any one or more of the provisions contained in this License shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this License, and this License shall be construed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

(f) *Entire Agreement.* This License, together with the exhibits attached hereto, constitutes and represents the entire and integrated agreement between Licensor and Licensee relative to the matters described herein and supersedes all prior negotiations, representations and/or agreements, either written or oral.

(g) *Amendment.* This License may not be altered, waived, amended or extended except by an instrument in writing signed by a duly authorized representative of Licensor and Licensee.

(h) *Waiver of Default.* It is not a waiver of or consent to default if the nondefaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any rights or remedies set forth in this License does not preclude pursuit of other rights or remedies in this License or provided by law, in equity, or otherwise.

(i) *Time.* Time is of the essence. Unless otherwise specified, all references to "days" mean calendar days. Business days exclude Saturdays, Sundays, and legal public holidays. If the date for performance of any obligation falls on a Saturday, Sunday, or legal public holiday, the date for performance will be the next following regular business day.

(j) *Construction of Certain Terms.* Section and subsection headings herein are for convenience only and shall not be used in interpretation of this Agreement. The words "includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.

(k) *No Waiver of Immunity.* Notwithstanding any other provision of this License, nothing in this License shall or may be deemed to be, or shall or may be construed to be, a waiver or relinquishment of any immunity, defense, or tort limitation to which the City, its officials, officers, employees, representatives, and agents are or may be entitled, including, without limitation, any waiver of immunity to suit.

(l) *No Third Party Beneficiaries; Binding Effect.* The provisions of this License are solely for the benefit of Licensor and Licensee and are not intended to and shall not create or grant any rights, contractual or otherwise, to any third person or entity. This License shall bind and inure to the benefit of the parties hereto, their successors and assigns.

(m) *Authority to execute.* The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this License on behalf of the parties hereto.

**SIGNED** effective as of the Effective Date first written above.

**LICENSOR:**

**TOWN OF ADDISON, TEXAS**

By: \_\_\_\_\_  
Ron Whitehead, City Manager

ATTEST:

By: \_\_\_\_\_  
Lea Dunn, City Secretary

**LICENSEE:**

**DCO ADDISON AT BROOKHAVEN LP,  
a Delaware limited partnership**

By: DCO REALTY, INC.,  
a Delaware corporation, its General Partner

By: \_\_\_\_\_  
Mark M. Culwell, Authorized Agent



**ACKNOWLEDGMENTS**

STATE OF TEXAS           §  
                                     §  
COUNTY OF DALLAS       §

Before me, the undersigned authority, on this day personally appeared Ron Whitehead, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this \_\_\_\_ day of October, 2011.

[SEAL]

\_\_\_\_\_  
NOTARY PUBLIC, State of Texas

My commission expires:\_\_\_\_\_

STATE OF TEXAS           §  
                                     §  
COUNTY OF DALLAS       §

Before me, the undersigned authority, on this day personally appeared Mark M. Culwell, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

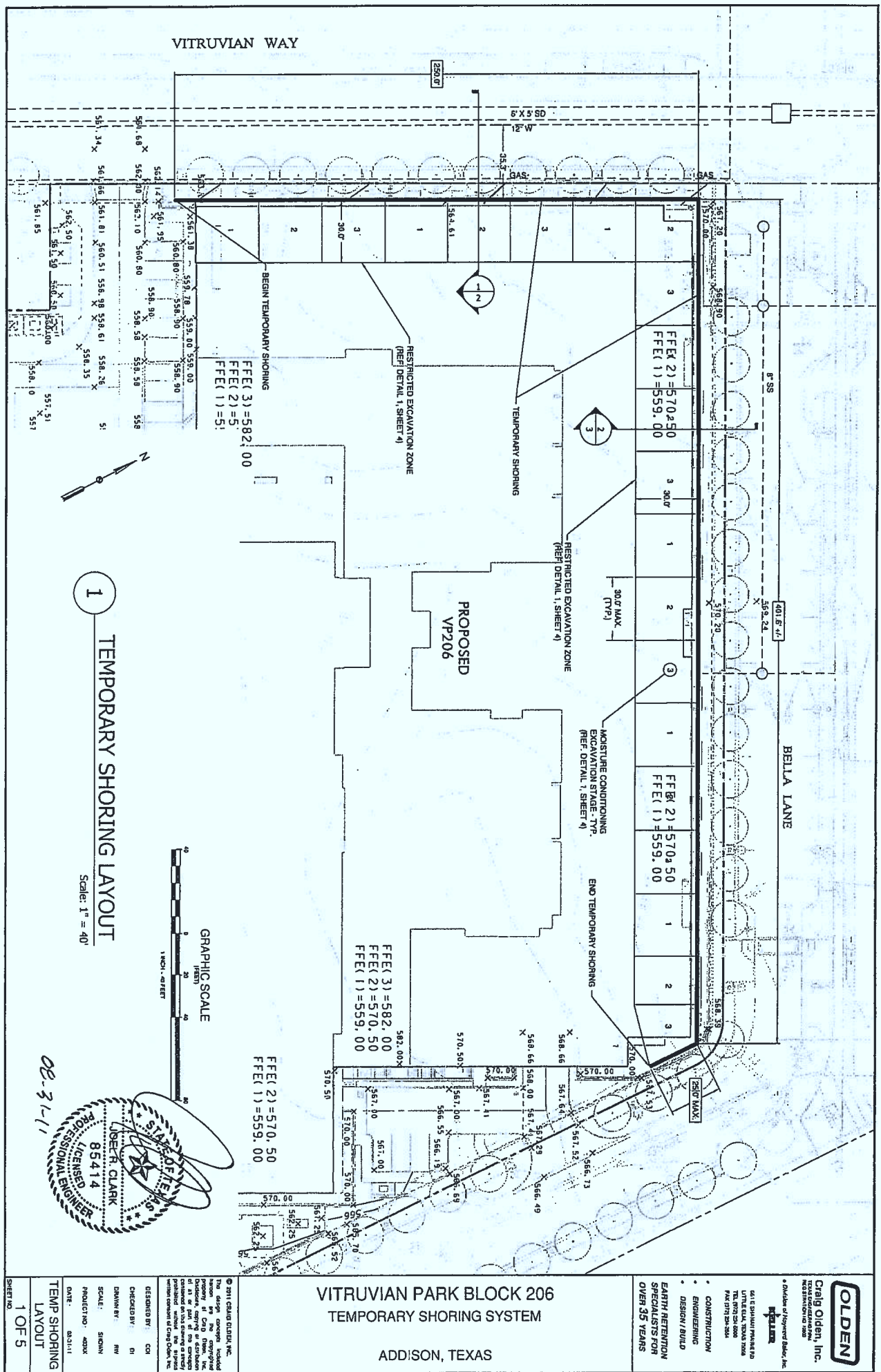
Given under my hand and seal of office this \_\_\_\_ day of October, 2011.

[SEAL]

\_\_\_\_\_  
NOTARY PUBLIC, State of Texas

My commission expires:\_\_\_\_\_

## **EXHIBIT 1**



**OLDEN**

Craig Olden, Inc.  
REGISTERED PROFESSIONAL ENGINEER  
No. 104897 State of Texas

• Division of Registered Professional Engineer, Inc.  
• **OLDEN**

641 E. DSH BLVD. SUITE 100  
THE WOODS, TEXAS 75074  
PH: (972) 294-3554  
FAX: (972) 294-3554

• CONSTRUCTION  
• ENGINEERING  
• DESIGN / BUILD  
• EARTH RETENTION SPECIALISTS FOR OVER 35 YEARS

**VITRUVIAN PARK BLOCK 206**

**TEMPORARY SHORING SYSTEM**

ADDISON, TEXAS

DESIGNED BY: COI

CHECKED BY: DI

DRAWN BY: RW

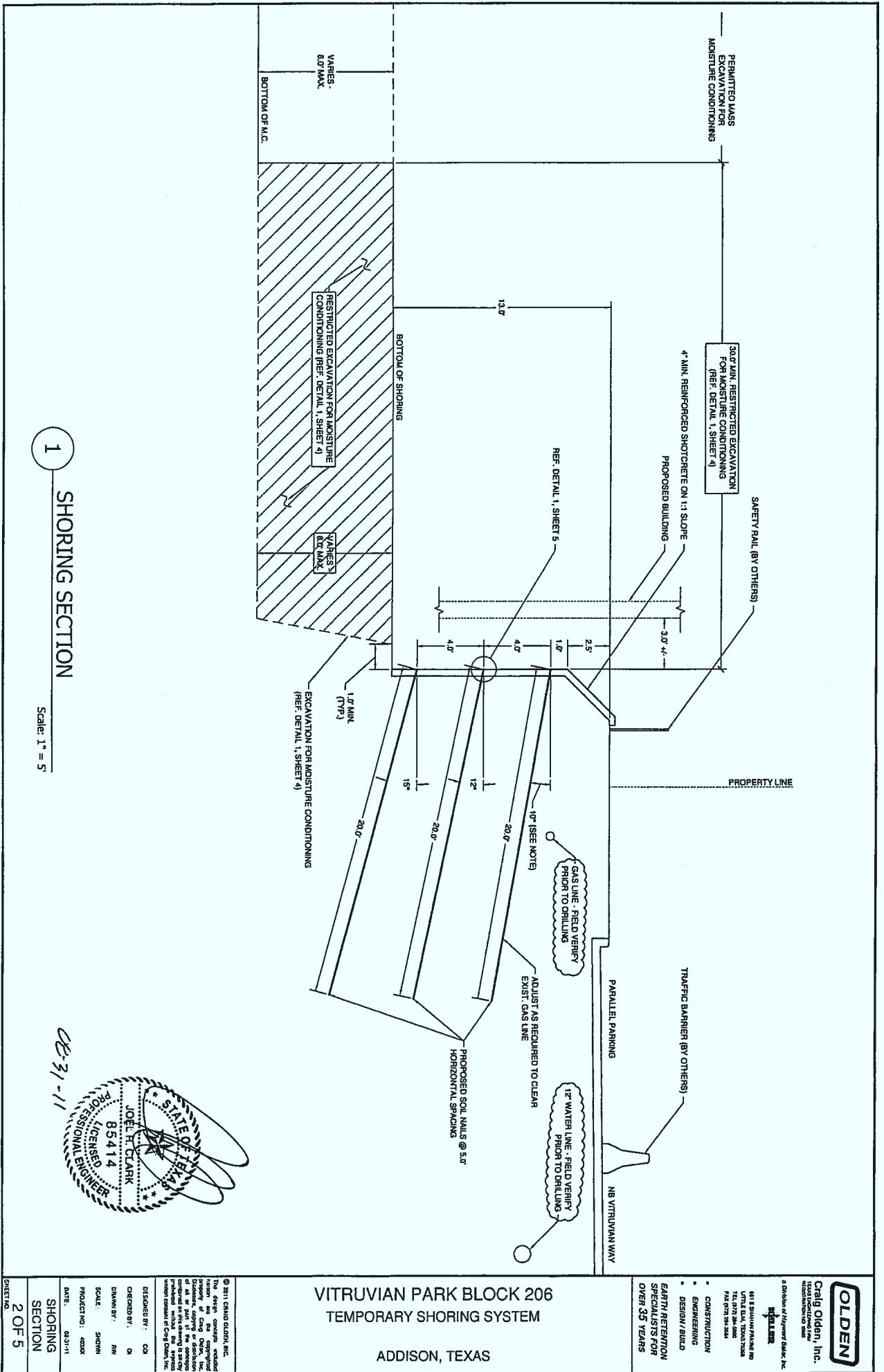
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PROJECT NO.: 4003X

DATE: 08-31-11

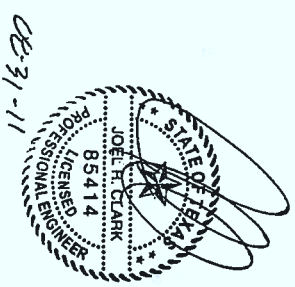
SHEET NO. 1 OF 5





1 SHORING SECTION

Scale: 1" = 5'



VITRUVIAN PARK BLOCK 206  
TEMPORARY SHORING SYSTEM

ADDISON, TEXAS

**OLDEN**

Craig Olden, Inc.  
10000 Highway 280, Suite 100  
Addison, Texas 75001  
TEL: 972.384.1800  
FAX: 972.384.1804

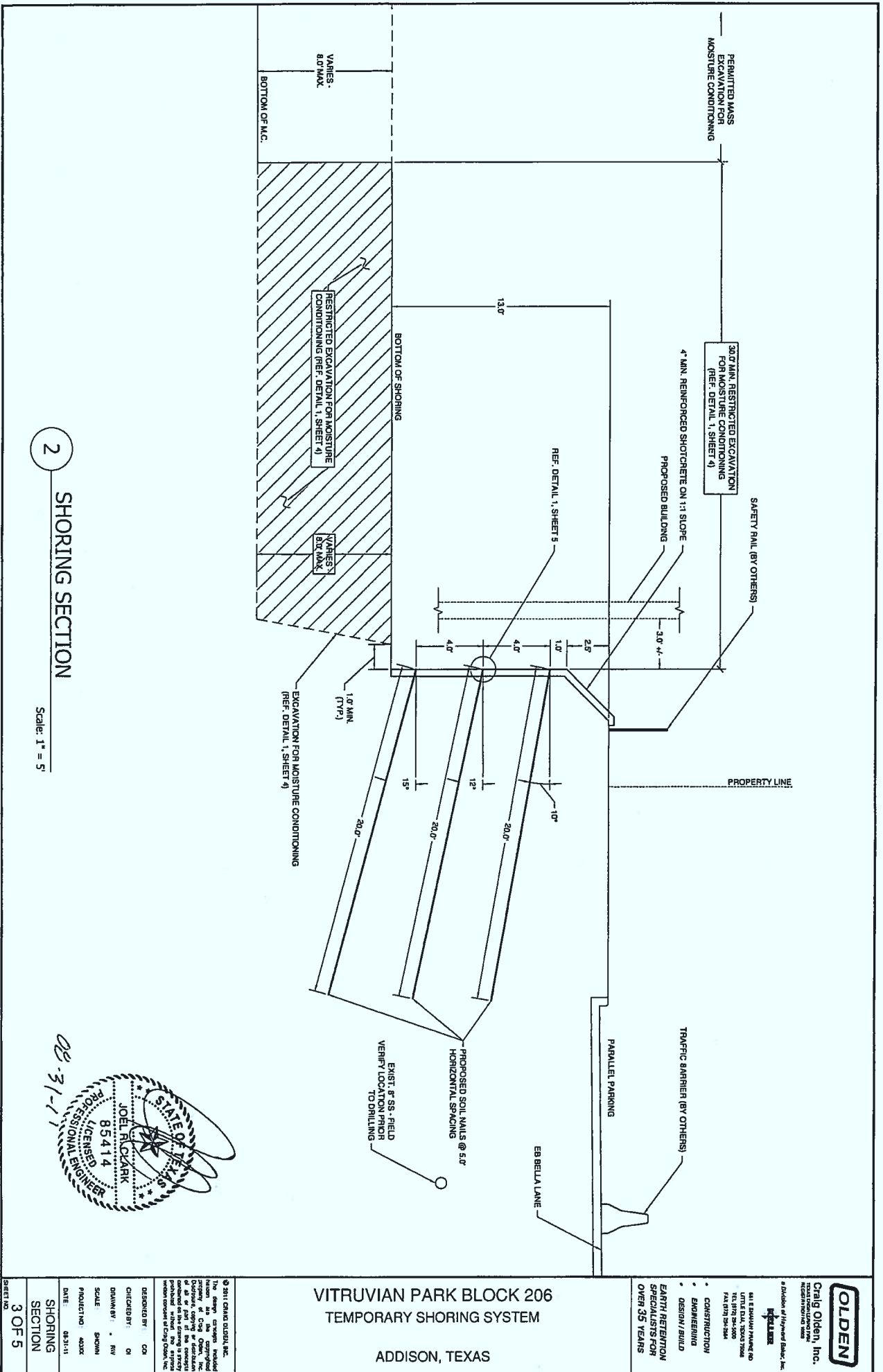
• CONSTRUCTION  
• ENGINEERING  
• DESIGN / BUILD

EARTH RETENTION  
SPECIALISTS FOR  
OVER 35 YEARS

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DESIGNED BY: COJ  
CHECKED BY: QS  
DRAWN BY: RW  
SCALE: SHOWN  
PROJECT NO.: 4020X  
DATE: 08-31-11

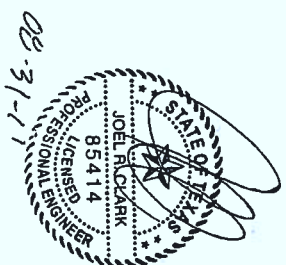
SHORING SECTION  
2 OF 5



2

# SHORING SECTION

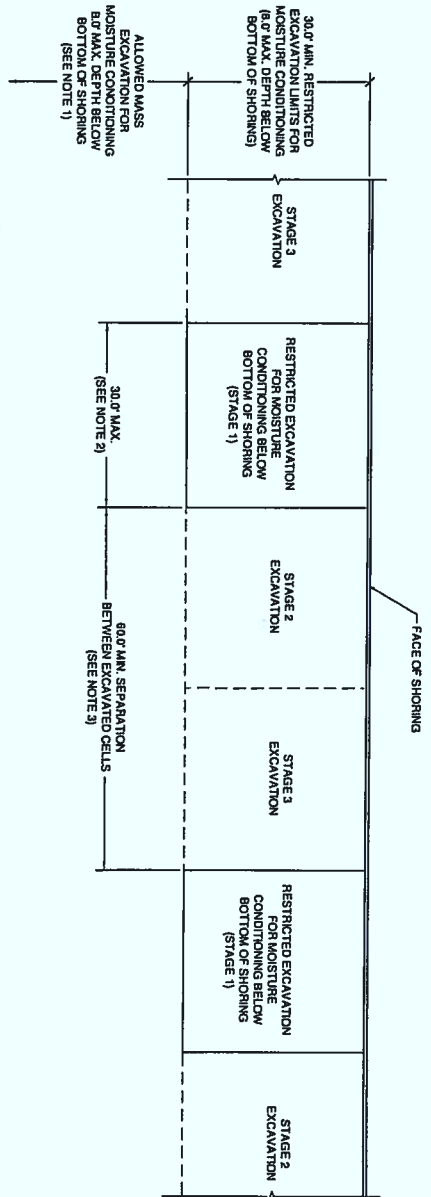
Scale: 1" = 5'



VITRUVIAN PARK BLOCK 206  
TEMPORARY SHORING SYSTEM  
ADDISON, TEXAS

**OLDEN**  
Craig Olden, Inc.  
a Division of Hayward Baker, Inc.  
1111 E. 10th Street, Suite 200  
Addison, TX 75001  
TEL: (972) 384-0000  
FAX: (972) 384-3544  
• CONSTRUCTION  
• ENGINEERING  
• DESIGN / BUILD  
• EARTH RETENTION  
SPECIALISTS FOR  
OVER 35 YEARS

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and retrieval system, without  
the express written consent of  
Craig Olden, Inc.  
DESIGNED BY: CO  
CHECKED BY: CI  
DRAWN BY: RW  
SCALE: SHOWN  
PROJECT NO: 40205  
DATE: 08-31-11  
SHEET NO: 3 OF 5



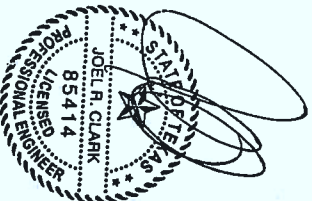
# 1 TYPICAL EXCAVATION SEQUENCE

Scale: 1" = 20'

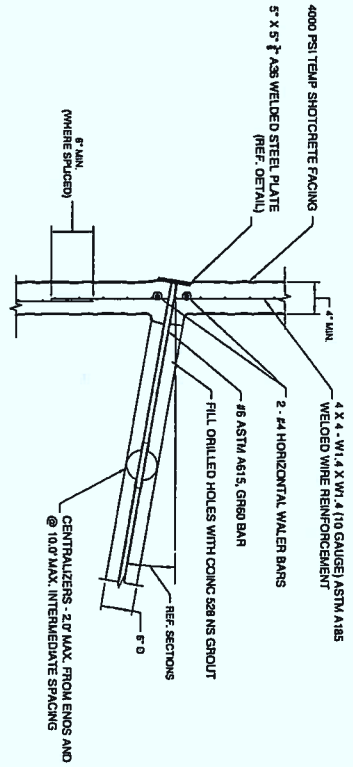
WITHIN RESTRICTED EXCAVATION LIMITS FOR MOISTURE CONDITIONING

## EXCAVATION NOTES:

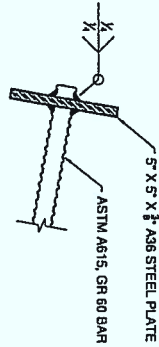
1. MASS EXCAVATION FOR MOISTURE CONDITIONING BELOW BOTTOM OF TEMPORARY SHORING SYSTEM SHALL NOT ENCROACH WITHIN RESTRICTED EXCAVATION LIMITS 30.0' (MEASURED PERPENDICULAR) FROM FACE OF SHORING.
2. EXCAVATION FOR MOISTURE CONDITIONING BELOW BASE OF SHORING WITHIN 30.0' RESTRICTED EXCAVATION LIMITS SHALL BE LIMITED TO CELLS NO WIDER THAN 30.0' MEASURED PARALLEL TO SHORING. SHOULD MASS EXCAVATION BE REQUIRED TO THE SHORING OR SIGNS OF DESTABILIZATION OF THE SHORING BE OBSERVED, THE EXCAVATION SHALL BE IMMEDIATELY BACKFILLED AND ADJACENT EXCAVATIONS SHALL BE IMPLEMENTED BY THE EARTHWORK CONTRACTOR TO REDUCE THE EXCAVATION LIMITS AND/OR REDUCE THE AMOUNT OF TIME TO BACKFILL AS REQUIRED TO AVOID SLOUGHING ADJACENT TO THE SHORING OR DESTABILIZATION OF THE SHORING FOR THE REMAINING EXCAVATION.
3. 60.0' MINIMUM (I.E., 2 CELLS WIDTH) SHALL BE LEFT UNEXCAVATED/UNDISTURBED BETWEEN EXCAVATED CELLS. UNDER NO CIRCUMSTANCES SHALL ADJACENT CELLS OR CELLS GREATER THAN 30.0' WIDE BE EXCAVATED WITHIN RESTRICTED EXCAVATION LIMITS.
4. EACH EXCAVATED CELL SHALL BE BACKFILLED THE SAME DAY WITHIN 12 HOURS OF INITIAL EXCAVATION.
5. CELLS SHALL BE BACKFILLED AND COMPACTED ACCORDING TO GEOTECHNICAL RECOMMENDATIONS PRIOR TO EXCAVATING ADJACENT CELLS FOR STAGES 2 AND 3 OF MOISTURE CONDITIONING.
6. FAILURE TO COMPLY WITH THE ABOVE RESTRICTIONS COULD LEAD TO DESTABILIZATION AND POSSIBLE FAILURE OF THE TEMPORARY SHORING.
7. SHOULD ANY SIGNS OF INSTABILITY (INCLUDING BUT NOT LIMITED TO GROUND MOVEMENT, CRACKING, SLOUGHING OF THE EXCAVATION BELOW THE BOTTOM OF SHORING OR MOVEMENT OR DISTRESS OF THE SHOTCRETE FACING) CONTINUE TO BE OBSERVED DURING EXCAVATION FOR MOISTURE CONDITIONING, SUGGESTION TO EARTHWORK CONTRACTOR MODIFICATIONS, ANY OPEN EXCAVATIONS SHALL BE IMMEDIATELY BACKFILLED AND COMING SHALL BE CONTACTED FOR DESIGN AND IMPLEMENTATION OF APPROPRIATE REMEDIAL MEASURES TO THE SHORING.



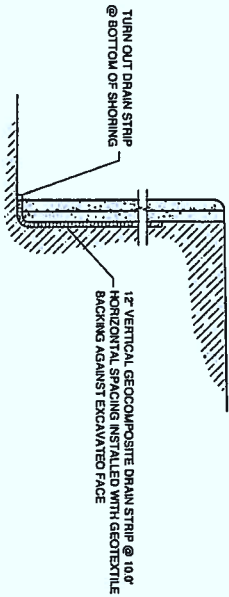
02-31-11



1 SOIL NAIL DETAIL  
Scale: N.T.S.



WELDED PLATE DETAIL



2 DRAIN DETAIL  
Scale: N.T.S.

**SHORING NOTES:**

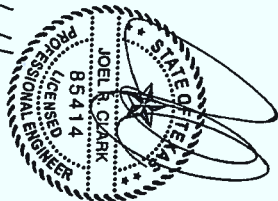
1. CONTRACTOR SHALL TAKE SUITABLE MEASURES TO PREVENT THE PONDING OF WATER ADJACENT TO THE SHORING THROUGHOUT THE DURATION OF THE PROJECT. PROLONGED PONDING OF WATER ADJACENT TO THE SHORING MAY COMPROMISE THE INTEGRITY OF THE SHORING.

**MATERIALS**

1. SOIL NAIL BARS SHALL CONFORM TO ASTM A615 GRADE 60.
2. SOIL NAIL PLATES SHALL BE ASTM A36 STEEL.
3. GROUT SHALL BE CONG 528S.
4. SHOTCRETE SHALL ACHIEVE 4,000 PSI MINIMUM 28-DAY COMPRESSIVE STRENGTH.
5. STEEL REINFORCEMENT SHALL CONFORM TO ASTM A615, GRADE 60. ALL LAP SPICES SHALL BE ACI CLASS "B" TENSION LAP SPICES.
6. WELDED WIRE FABRIC REINFORCEMENT SHALL CONFORM TO ASTM A185 (F<sub>y</sub> = 65,000 PSI)

THE FOLLOWING DESIGN PARAMETERS WERE USED FOR THE TEMP SHORING DESIGN:

CLAY :  $\phi = 22^\circ$  ;  $c = 400$  psi ;  $\gamma = 125$  pc  
ULTIMATE NAIL PULLOUT RESISTANCE : 1,000 psi



08-31-11

VITRUVIAN PARK BLOCK 206  
TEMPORARY SHORING SYSTEM

ADDISON, TEXAS



Craig Olden, Inc.

MEMBER OF THE

Division of Hayward Baker, Inc.



11111 RICHMOND PARKWAY  
SUITE 100  
DALLAS, TEXAS 75241-1000  
TEL: 972-281-5000  
FAX: 972-281-5044

- CONSTRUCTION
- ENGINEERING
- DESIGN / BUILD

EARTH RETENTION  
SPECIALISTS FOR  
OVER 35 YEARS

SHEET NO.

5 OF 5

SHORING  
DETAILS

DESIGNED BY : CM

CHECKED BY : DJ

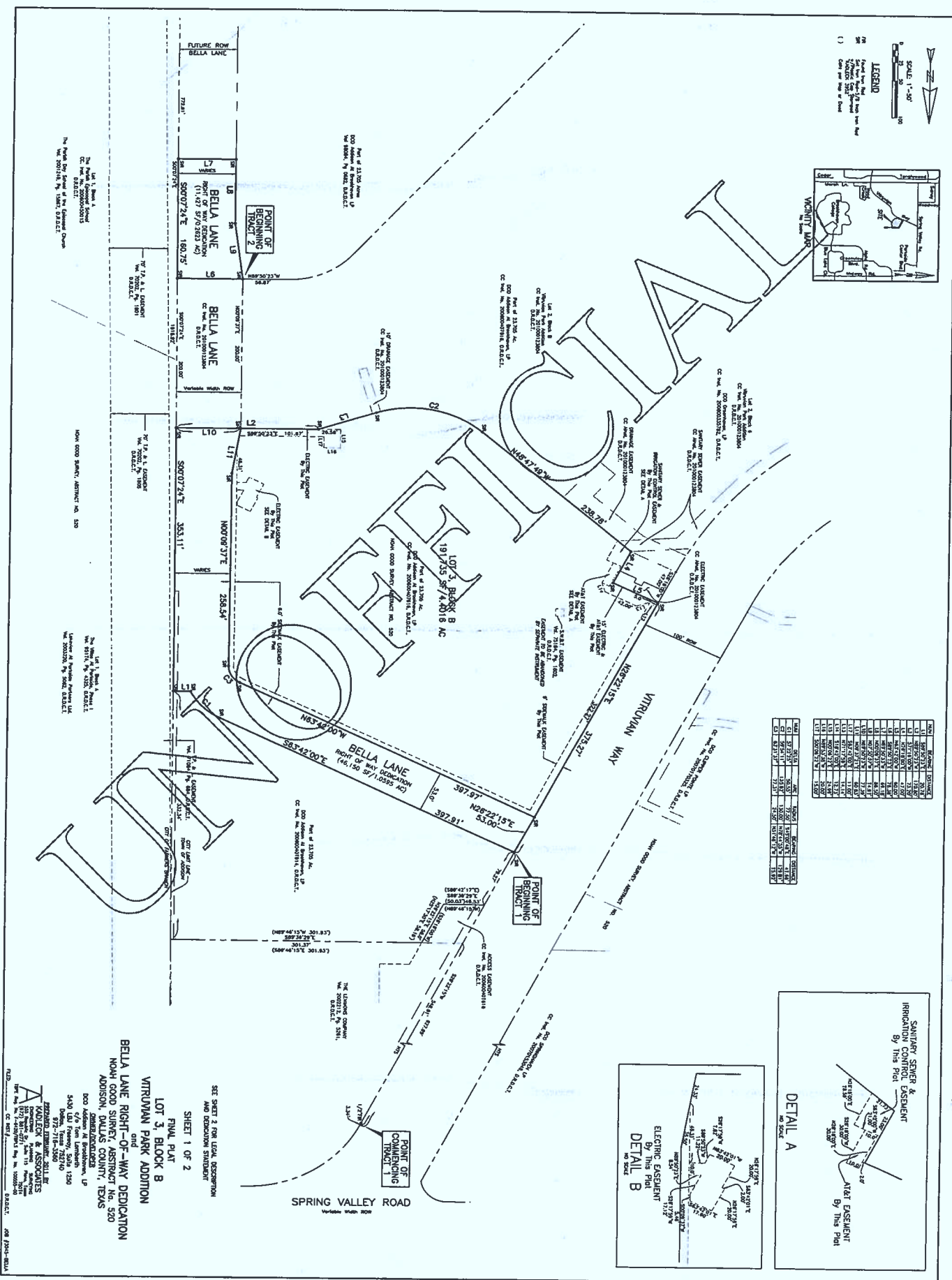
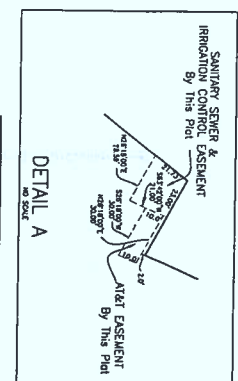
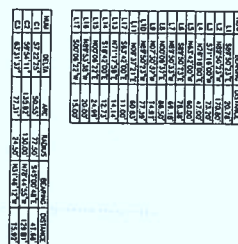
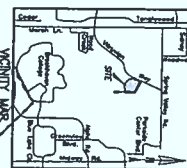
DRAWN BY : HW

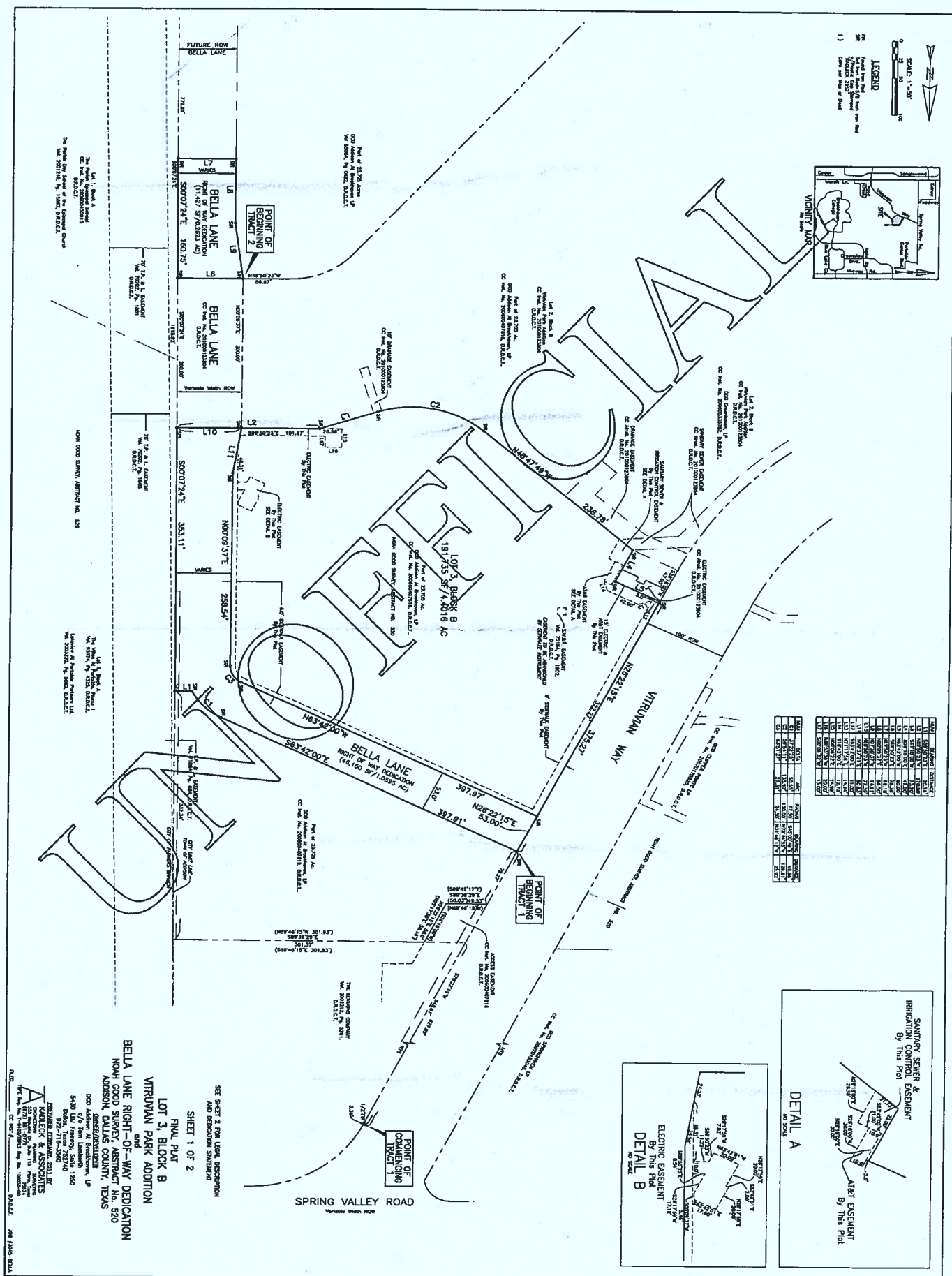
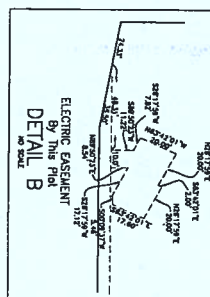
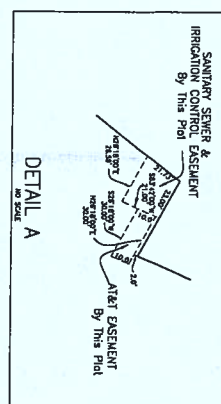
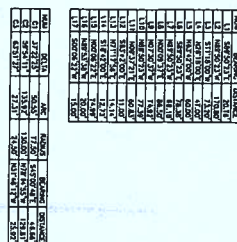
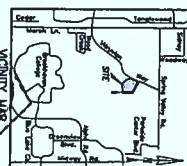
SCALE : SHOWN

PROJECT NO. : 40306

DATE : 08/31/11

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## **Council Agenda Item: #R3**

### **AGENDA CAPTION:**

Discussion and Consideration of an appointment of a Member to the Planning and Zoning Commission.

### **FINANCIAL IMPACT:**

NA

### **BACKGROUND:**

Commission John Oliver's first term on the Planning and Zoning Commission will expire on October 13, 2011. Commissioner Oliver's appointment belongs to Councilmember DeFrancisco.

### **RECOMMENDATION:**

NA

### **COUNCIL GOALS:**

N/A

### **ATTACHMENTS:**

Description:

Type:

No Attachments Available



## Council Agenda Item: #R4

### AGENDA CAPTION:

**PUBLIC HEARING** Case 1641-SUP/Exxon-Wendys. Public hearing, discussion and consideration of approval of an ordinance approving a change to an existing planned development zoning district, being Planned Development District Ordinance No. 626 that zoned the property generally located at 3710 Belt Line Road, in order to allow the sale of beer and wine for off-premises consumption, and approving a Special Use Permit for the sale of beer and wine for off-premises consumption only for that said property, located in a Planned Development District located at 3710 Belt Line Road, on application from Exxon-Wendys, represented by the Gerald Franklin Agency.

**COMMISSION FINDINGS:** The Addison Planning and Zoning Commission, meeting in regular session on September 22, 2011, voted to recommend approval of an amendment to an existing Planned Development District, #626, in order to allow the sale of beer and wine for off-premises consumption only, and approval of a Special Use Permit for the sale of beer and wine for off-premises consumption only, on application from Exxon/Wendys, subject to no conditions.

Voting Aye: Doherty, Groce, Gunther, Hewitt, Oliver, Wheeler,  
Voting Nay: none  
Absent: Angell

### FINANCIAL IMPACT:

NA

### BACKGROUND:

NA

### RECOMMENDATION:

Administration recommends approval.

### COUNCIL GOALS:

N/A

### ATTACHMENTS:

Description:

☐ [docket map, staff report, and commission findings](#)

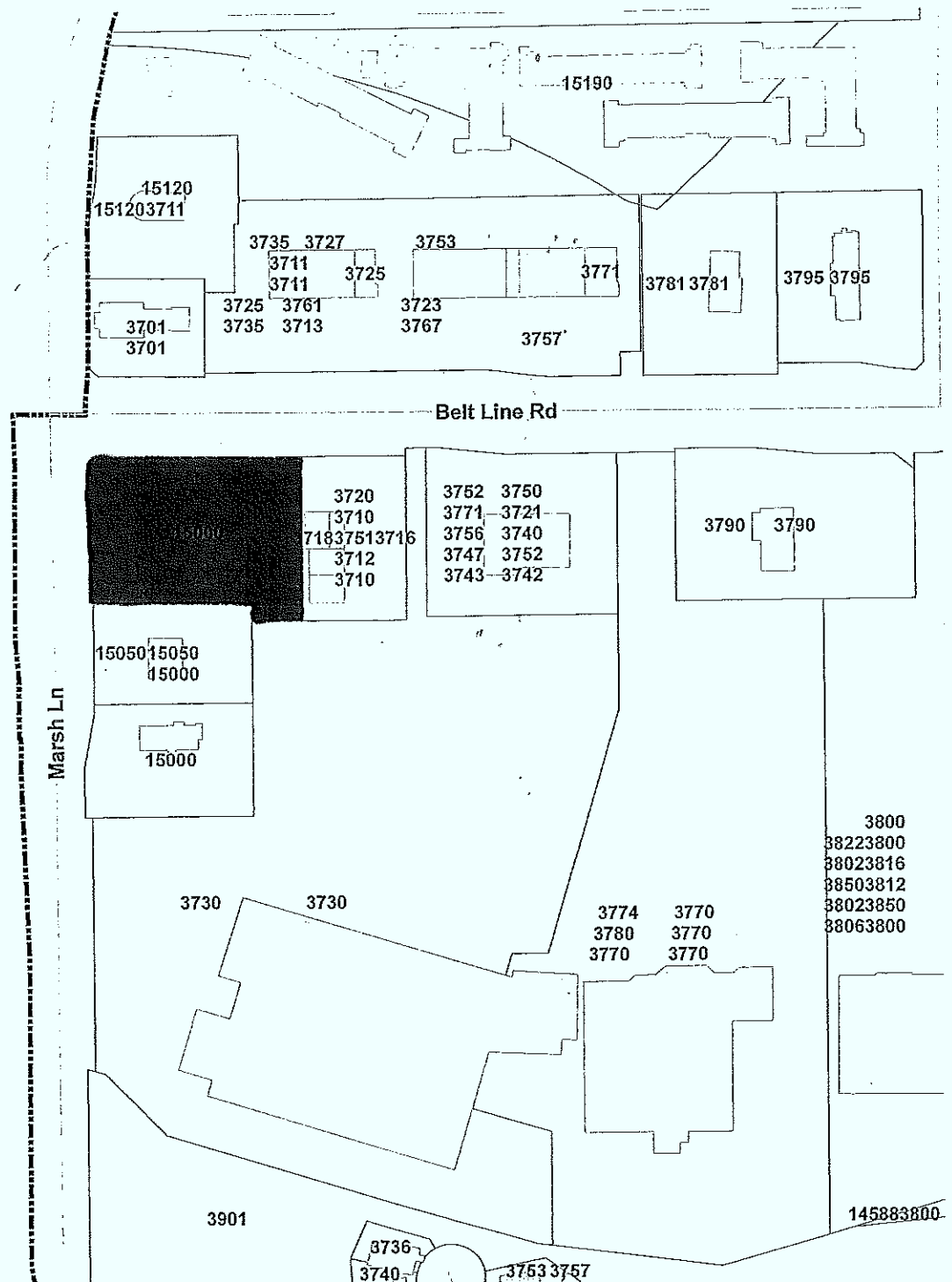
Type:

Cover Memo



# 1641-SUP

**PUBLIC HEARING** Case 1641-SUP/Exxon-Wendys. Public hearing, discussion and consideration of approval of an ordinance approving a change to an existing planned development zoning district, being Planned Development District Ordinance No. 626 that zoned the property generally located at 3710 Belt Line Road, in order to allow the sale of beer and wine for off-premises consumption, and approving a Special Use Permit for the sale of beer and wine for off-premises consumption only for that said property, located in a Planned Development District located at 3710 Belt Line Road, on application from Exxon-Wendy's represented by the Gerald Franklin Agency.





**DEVELOPMENT SERVICES**

(972) 450-2880 Fax: (972) 450-2837

16801 Westgrove

Post Office Box 9010 Addison, Texas 75001-9010

September 14, 2011

**STAFF REPORT**

**RE:** Case 1641-SUP/Exxon-Wendys

**LOCATION:** Planned Development District 626  
generally located at 3710 Belt Line Road

**REQUEST:** Approval of a change to an existing  
planned development zoning district,  
being Planned Development District 626  
in order to allow the sale of beer  
and wine for off-premises consumption,  
and approving a Special Use Permit for  
the sale of beer and wine for off-premises  
consumption only for the said property

**APPLICANT:** Mr. Gerald Franklin of the Gerald  
Franklin Agency

**DISCUSSION:**

**Background.** This site is an "out-parcel" adjacent to the Addison Town Center shopping center at the southeast corner of the intersection of Marsh Lane and Belt Line Road. In 1995 (Ordinance 095-057, approved on November 28, 1995) the site was developed with an Exxon Service Station, convenience store, and Wendy's restaurant located in the same building. At this point, the owners would like to have the ability to sell beer and wine for off-premises consumption in the convenience store.

There is a two-step process required for Exxon/Wendys to be able to sell beer and wine for off-premises consumption.

1. First, the planned development district regulations must be amended to the sale of beer and wine for off-premises consumption as an allowed use,
2. A Special Use Permit for the sale of beer and wine for off-premises consumption only must be approved.

Planned Development Ordinance 626. The Planned Development ordinance that covers the out-parcel on which the Exxon/Wendys is located allows all typical local retail uses. The uses are listed in Section 2. Staff recommends the list in Section 2 be amended to read as follows:

SECTION 2. In the hereinabove described land, no land or building shall be used, erected or converted to any use other than:

- Antique shop
- Aquarium
- Art gallery
- Bakery, retail sales only
- Bank, office, wholesale sales office or sample room
- Barber and beauty shops
- Bird and pet shops, retail
- Book or stationery store
- Camera shop
- Candy shop
- Caterer and wedding service
- Cleaning, dyeing and laundry pick-up station for receiving and delivery of articles to be cleaned, dyed and laundered, but no actual work to be done on premises
- Cleaning and pressing shops having an area of not more than 6,000 square feet
- Curtain cleaning shop having an area of not more than 6,000 square feet
- Department store, novelty or variety shop, retail sales only
- Drug store, retail sales only
- Electrical goods, retail sales only
- Film developing and printing
- Florist, retail sales only
- Furniture store, retail only
- Frozen food lockers, retail
- Grocery store, retail sales only
- Hardware, sporting goods, toys, paints, wallpaper, clothing, retail sales only
- Household and office furniture, furnishings, and appliances, retail only
- Job printing
- Jewelry, optical goods, photographic supplies, retail sales only
- Letter and mimeograph shop
- Library, rental
- Meat market, retail sales only
- Office building
- Photographers or artists studio
- Parking lot without public garage or automobile facilities for the parking of passenger cars and trucks of less than one (1) ton capacity only
- Professional offices for architect, attorney, engineer, and real estate
- Piano and musical instruments, retail sales only

Professional offices for architect, attorney, engineer, and real estate  
Piano and musical instruments, retail sales only  
Restaurant with or without sale of alcohol for on-premises consumption (subject to Special Use Permit approval)  
Retail store/shop for custom work or the making of articles to be sold for retail on the premises  
**Sale of beer and wine for off-premises consumption only (subject to Special Use Permit approval)**  
Seamstress, dressmaker or tailor  
Shoe repair shop, retail sales only  
Studios, dance, music, drama, health, reducing  
Studio for the display and sale of glass, china, art objects, cloth and draperies  
Taxi stand  
Washateria, equipped with automatic washing machines of the type customarily found in a home and where the customers may personally supervise the washing and handling of their laundry  
Wearing apparel, including clothing, shoes, hats, millinery and accessories  
Accessory buildings and uses customarily incident to the above uses.

Proposed Plan. Exxon/Wendys occupies a 4,300 square foot space The beer and wine sales will be added to the existing floor plan for the convenience store. There will not be any changes to the floor plan.

Facades. Exxon/Wendys is not proposing any changes to the existing facades of the restaurant or convenience store.

Parking. The site provides 60 spaces that serve both the Wendy's restaurant and the convenience store. Beer and wine sales are a standard retail use and currently park at 1/200. The addition of beer and wine sales to this existing store does not change the required parking.

Landscaping. Slade Strickland has inspected the site and finds that the landscaping complies with the ordinance and is being maintained in a good condition.

#### RECOMMENDATION:

The staff recommends approval of the amendment to Planned Development Ordinance 626, Section 2, to add the sale of beer and wine for off-premises consumption only as an allowed use.

The staff also recommends approval of a Special Use Permit for the sale of beer and wine for off-premises consumption only, on application from Exxon/Wendys, subject to no conditions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'CMORAN'. The letters are stylized and connected, with a prominent 'C' and 'M'.

Carmen Moran  
Director of Development Services

**COMMISSION FINDINGS:**

The Addison Planning and Zoning Commission, meeting in regular session on September 22, 2011, voted to recommend approval of an amendment to an existing Planned Development District, #626, in order to allow the sale of beer and wine for off-premises consumption only, and approval of a Special Use Permit for the sale of beer and wine for off-premises consumption only, on application from Exxon/Wendys, subject to no conditions.

Voting Aye: Doherty, Groce, Gunther, Hewitt, Oliver, Wheeler,

Voting Nay: none

Absent: Angell

## Memorandum

Date: September 13, 2011  
To: Carmen Moran  
From: Slade Strickland  
Subject: **Case 1461-SUP/Exxon-Wendy's**

The site landscaping and irrigation appear to be receiving routine maintenance, so there are no landscape conditions.

## Council Agenda Item: #R5

### AGENDA CAPTION:

**PUBLIC HEARING** Case 1642-SUP/Petite Pooch Chateau. Public hearing, discussion and consideration of approval of an ordinance providing for a change of zoning on a tract of land generally considered within the Town at 15070 Beltwood parkway, which tract of land is currently zoned Commercial-2, by approving for that tract of land a Special Use Permit for a dog grooming salon/dog kennel on application from Petite Pooch Chateau, represented by Mr. Ed Homko, owner.

**COMMISSION FINDINGS:** The Addison Planning and Zoning Commission, meeting in regular session on September 22, 2011, voted to recommend approval of a Special Use Permit for a dog grooming salon/dog kennel, on application from Petite Pooch Chateau, subject to no conditions.

Voting Aye: Doherty, Groce, Gunther, Hewitt, Oliver, Wheeler,  
Voting Nay: none  
Absent: Angell

### FINANCIAL IMPACT:

NA

### BACKGROUND:

NA

### RECOMMENDATION:

Administration recommends approval.

### COUNCIL GOALS:

N/A

### ATTACHMENTS:

Description:

☐ [docket map, staff report, and commission findings](#)

Type:

Cover Memo



## 4799

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Addison Rd.

Belt Line Rd

N Inwood Rd

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| 4848 | 4812 |
| 4860 | 4826 |

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od Rd.

14875

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Beltwood Pkwy.

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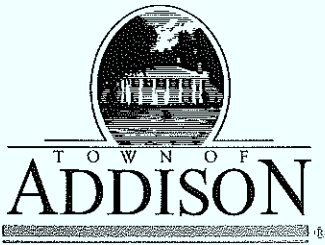
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Beltway Dr

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| 400 | 4500 |
| 490 | 4540 |

4544  
45384536  
4525 45354535  
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4540

**DEVELOPMENT SERVICES**

(972) 450-2880 Fax: (972) 450-2837

16801 Westgrove

Post Office Box 9010 Addison, Texas 75001-9010

September 15, 2011

**RE:** Case 1642-SUP/Petite Pooch Chateau

**LOCATION:** 15070 Beltwood Parkway

**REQUEST:** Approval of a Special Use Permit for a dog grooming salon/dog kennel

**APPLICANT:** Petite Pooch Chateau, represented by Mr. Ed Homko, owner

**DISCUSSION:**

Background. The Petite Pooch Chateau is proposing to take over an existing building that formerly housed a Massage Therapy School, and convert it into a dog grooming salon/dog kennel. The Petite Pooch Chateau has been in business for several years at 3420 Garden Brook Drive in Farmers Branch. At this point, the owner, Mr. Ed Homko, would like to move his business into Addison. He is an Addison resident and would like to have his business closer to his home, and he says that most of his customers come from Addison, and an Addison location would be more convenient for them.

A dog grooming facility or pet shop that does not board pets is an allowed use in Local Retail zoning. However, a facility that boards pets is defined by the Town as a kennel, and requires a Special Use Permit. The requirement has been in the zoning ordinance since its original creation, and is most likely based on the way that kennels formerly operated. In the past, a kennel often kept pets outside in pens or cages. The neighbors of a kennel sometimes had issues with barking and odors. However, in the past few years, the kennel and dog boarding business has changed significantly because more and more dog owners keep their pets inside all the time, and don't want them kept outside when they are boarded. The Petite Pooch Chateau will not board or kennel any pets outside the facility, but will keep all dogs inside in a climate-controlled environment. The owner is proposing to take over some parking spaces at the east end of the building and add an exercise yard, but it will be for supervised exercise only. Pets will not be kept in the yard overnight.

Proposed Plan. The 5,400 square foot building can be converted into a dog grooming salon/dog kennel with only minor modifications. Mr. Homko is planning to use the former classroom as a play area and the former massage rooms as smaller boarding

rooms. He is proposing one grooming space, two spaces for dog day-care, and six spaces for smaller boarding rooms. The owner also plans to convert a 2,320 square-foot parking area to a grassed play yard for the dogs. The play area will be fenced with a solid fence, irrigated, and grassed.

Parking. The staff does not have a parking requirement for a dog kennel. The applicant is proposing 16 spaces, which given the pick-up and drop-off nature of a dog boarding facility, seems a reasonable number of spaces.

Facades. The applicant is not proposing to make any changes to the existing facades of the building.

Landscaping. Slade Strickland has inspected the site and the landscaping plan submitted by the applicant. He finds the plan acceptable subject to the condition that a rain and freeze sensor be added to the existing irrigation controller.

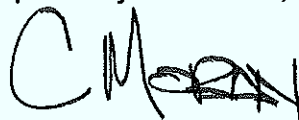
#### RECOMMENDATION:

The staff has looked at other newly-constructed dog boarding facilities in the area, and has not been found any problems or issues with adjacent owners. The applicant is an experienced operator. The location of this site seems to work well for this type of use, and the applicant is proposing a reasonable re-use of the entire building.

The staff recommends approval of an ordinance approving a Special Use Permit for a dog grooming/dog kennel, on application from the Petite Pooch Chateau, subject to the following condition:

-a rain and freeze sensor shall be added to the existing irrigation controller prior to the issuance of a Certificate of Occupancy for the building.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'C Moran', with a stylized flourish at the end.

Carmen Moran  
Director of Development Services

**COMMISSION FINDINGS:**

The Addison Planning and Zoning Commission, meeting in regular session on September 22, 2011, voted to recommend approval of a Special Use Permit for a dog grooming salon/dog kennel, on application from Petite Pooch Chateau, subject to no conditions.

Voting Aye: Doherty, Groce, Gunther, Hewitt, Oliver, Wheeler,

Voting Nay: none

Absent: Angell

## Memorandum

Date: September 13, 2011  
To: Carmen Moran  
From: Slade Strickland  
Subject: **Case 1462-Petite Pooch Chateau**

The landscape plan submitted by the applicant is approved with the condition that a rain and freeze sensor be added to the irrigation controller.

## Council Agenda Item: #R6

### AGENDA CAPTION:

**PUBLIC HEARING** Case 1643-SUP/Raising Canes Chicken Fingers. Public hearing discussion and consideration of approval of an ordinance providing for a change of zoning on a tract of land generally located within the Town at 4100 Belt Line Road, which tract of land is currently zoned Planned Development District #004-033, by approving for that tract of land a Special Use Permit for a restaurant on application from Raising Canes Chicken Fingers, represented by Mr. John Spiars of Spiars Engineering, Inc.

**COMMISSION FINDINGS:** The Addison Planning and Zoning Commission, meeting in regular session on September 22, 2011, voted to recommend approval of a Special Use Permit for a restaurant, on application from Raising Canes Chicken Fingers, subject to the following condition: -the landscaping plan shall be revised to show the replacement of 13 existing cedar elm trees with four, 6-inch diameter cedar elms, and 12, 6-inch diameter red oak trees.

Voting Aye: Doherty, Groce, Gunther, Hewitt, Oliver, Wheeler,  
Voting Nay: none  
Absent: Angell

### FINANCIAL IMPACT:

NA

### BACKGROUND:

NA

### RECOMMENDATION:

Administration recommends approval.

### COUNCIL GOALS:

N/A

### ATTACHMENTS:

Description:

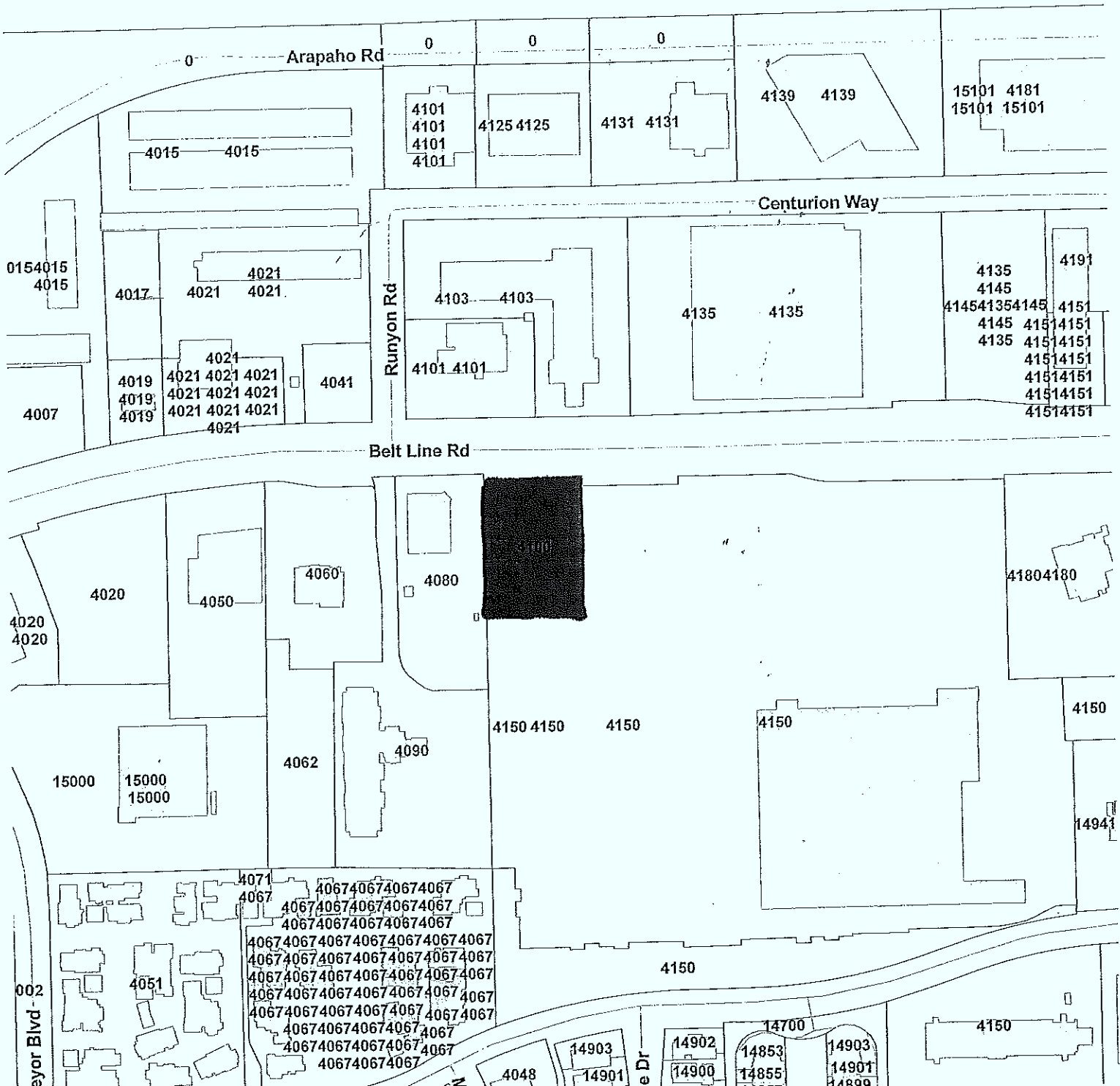
☐ [docket map, staff report, and commission findings](#)

Type:

Cover Memo

# 1643-SUP

**PUBLIC HEARING** Case 1643-SUP/Raising Canes Chicken Fingers. Public hearing discussion and consideration of approval of an ordinance approving a Special Use Permit for a restaurant, located at 4100 Belt Line Road, on application from Raising Canes Chicken Fingers, represented by Mr. John Spiars of Spiars Engineering, Inc.





**DEVELOPMENT SERVICES**  
(972) 450-2880 Fax: (972) 450-2837

16801 Westgrove  
Post Office Box 9010 Addison, Texas 75001-9010

September 15, 2011

**STAFF REPORT**

**RE:** Case 1643-SUP/Raising Canes Chicken Fingers

**LOCATION:** 4100 Belt Line Road

**REQUEST:** Approval of a Special Use Permit for a restaurant.

**APPLICANT:** Raising Canes Chicken Fingers,  
represented by Mr. John Spiars of  
Spiars Engineering, Inc.

**DISCUSSION:**

Background. This site is zoned Planned Development, Ordinance #459, which was approved by the City Council on December 12, 1978. The site was originally developed with a McAlister's Gourmet Deli. The Special Use Permit for a restaurant was approved through Ordinance 098-042, passed by the City Council on September 8, 1998. Later, the Deli was taken over by Baker Bros. Deli. The operators decided to obtain a Special Use Permit for the sale of alcoholic beverages for on-premises consumption, which was approved through Ordinance 001-013, passed on May 8, 2001. Baker Bros. Deli moved to the 5000 block of Belt Line, and the existing building was remodeled and converted to a Washington Mutual Savings and Loan (Ordinance 004-033, passed on August 10, 2004). At this point, Raising Canes Chicken Fingers would like to demolish the existing building and construct a new restaurant on the site.

Proposed Plan. The plans indicate a restaurant of 3,678 square feet. Raising Canes Chicken Fingers is a fast food restaurant and will have a drive-thru window. The dining room has a combination of counter seats, tables, and booths and will seat 80 customers. All beverages are self-service.

Facades. The facades are a combination of brick, stucco, and glass store-front.

Parking. Planned Development Ordinance 459 sets the parking ratio for this district at one space per 1/100 square feet rather than the 1/70 that is required in a standard Local Retail district. The building is 3,678 square feet and requires 37 parking spaces, which it provides.



Queuing and traffic circulation. The staff has discussed the queuing requirements for a drive-thru window with the applicant. The staff requires a queuing length of five cars, or 100 feet, back from the order board. This site provides a queuing length of 13 cars, or 267 feet, back from the order board. Raising Canes has submitted a letter stating that, based on the experience it has had in its other restaurants, it expects the peak queue at any time to be 12 cars.

The staff also requires a site with a drive-thru restaurant to have access to two streets so that traffic can filter into and out of the site. This site provides access to two streets through an ingress-egress easement through the Sam's parking lot that provides access to the northern extension of Runyon Road.

Landscaping. The proposed landscaping plan has been reviewed by Slade Strickland. He notes that 13 mature Cedar Elm trees are being removed and the plans show them to be replaced with 11 new cedar elm trees and five new red oak trees.

The staff discussed the tree removal with the applicant's Landscape Architect, and he stated that the removal and replanting is necessary because the site has to be completely re-graded to accommodate the new building, and the trees that are being taken out will be destroyed by the re-grading. The staff understands that the site has to be re-graded to allow the water to reach the storm sewer system on Belt Line Road, and accepts that the established cedar elms need to be removed. However, Slade is recommending that the applicant up-size the cedar elms and reduce the number to four. He also recommends that the applicant upsize the proposed red oaks and increase the number to 12. The staff believes the red oaks are a more desirable tree and will live longer than the cedar elms. However, some cedar elms can be maintained on the site to give it some evergreen color in the winter.

Signs. The applicant did not show any signs on the drawings. The applicant should be advised that all signs must be permitted through the Addison Sign Ordinance and cannot be permitted through this process.

## RECOMMENDATION:

Staff feels that the development of a Raising Canes restaurant is a reasonable re-development and re-use of this site. Staff recommends approval of an ordinance approving a Special Use Permit for a restaurant, subject to the following condition:

- the landscaping plan shall be revised to show the replacement of 13 existing cedar elm trees with four, 6-inch diameter cedar elms, and 12, 6-inch diameter red oak trees.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'CMORAN'.

Carmen Moran  
Director of Development Services

**COMMISSION FINDINGS:**

The Addison Planning and Zoning Commission, meeting in regular session on September 22, 2011, voted to recommend approval of a Special Use Permit for a restaurant, on application from Raising Canes Chicken Fingers, subject to the following condition:

-the landscaping plan shall be revised to show the replacement of 13 existing cedar elm trees with four, 6-inch diameter cedar elms, and 12, 6-inch diameter red oak trees.

Voting Aye: Doherty, Groce, Gunther, Hewitt, Oliver, Wheeler,

Voting Nay: none

Absent: Angell



August 19, 2011

Mrs. Carmen Moran, AICP  
Director of Development Services  
Town of Addison  
P.O. Box 9010  
Addison, Texas 75001

Re: Proposed Raising Cane's Restaurant  
Addison, Texas

Dear Mrs. Moran,

Based on the estimated sales for this location, an unusually high volume of drive-thru traffic is not expected. Per our Chief Operating Officer, the anticipated drive-thru stacking and drive time for the referenced site at peak hours will be 12 cars and two minutes, respectively.

As requested from our Civil Engineer, John Spiars, we are providing this anticipated peak volume data in lieu of a traffic impact analysis. Please feel free to call if you have any questions or require additional information.

Sincerely,  
Raising Cane's Restaurants

A handwritten signature in black ink that reads "Rick Fuchs". The signature is written in a cursive, flowing style.

Rick Fuchs  
Vice President - Real Estate

## Memorandum

Date: September 13, 2011  
To: Carmen Moran  
From: Slade Strickland  
Subject: **Case 1463-SUP/Raising Canes Chicken Fingers**

The landscape plan shows removal of 13 existing cedar elm trees, each ranging 8-12 inches in diameter, due to re-grading of the site to meet the site drainage requirements. The landscape architect informed staff that the new grading would significantly cut into the root systems of the existing trees; thus, making it impractical to attempt to save them.

To this end, the plan shows to replace the 13 existing cedar elms with (11) -4 inch diameter cedar elms and (5) - 4 inch diameter red oaks. Staff recommends that the planting plan be revised to show the tree replacement quantities as (4) – 6 inch diameter cedar elms and (12) – 6 inch diameter red oaks to mitigate removal of the established cedar elms.

The tree protection technique shown on the landscape plan for the existing trees to remain will also apply to the existing mature live oaks along the Sam's Club property east of the proposed site, to prevent root damage when the existing parking lot removal and grading occur.

## Council Agenda Item: #R7

### AGENDA CAPTION:

**PUBLIC HEARING** Case 1644-SUP/Dream Café. Public hearing, discussion and consideration of approval of an ordinance providing for a change of zoning on a tract of land generally located within the Town at 5100 Belt Line Road, Suite 582B, which tract of land is currently zoned Planned Development District #002-001, by approving a Special Use Permit for a restaurant, and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only on application from Dream Café, represented by Ms. Mary O'Brien.

**COMMISSION FINDINGS:** The Addison Planning and Zoning Commission, meeting in regular session on September 22, 2011, voted to recommend approval of a Special Use Permit for a restaurant and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, on application from Dream Café, subject to no conditions.

Voting Aye: Doherty, Groce, Gunther, Hewitt, Oliver, Wheeler,  
Voting Nay: none  
Absent: Angell

### FINANCIAL IMPACT:

NA

### BACKGROUND:

NA

### RECOMMENDATION:

Administration recommends approval.

### COUNCIL GOALS:

N/A

### ATTACHMENTS:

Description:

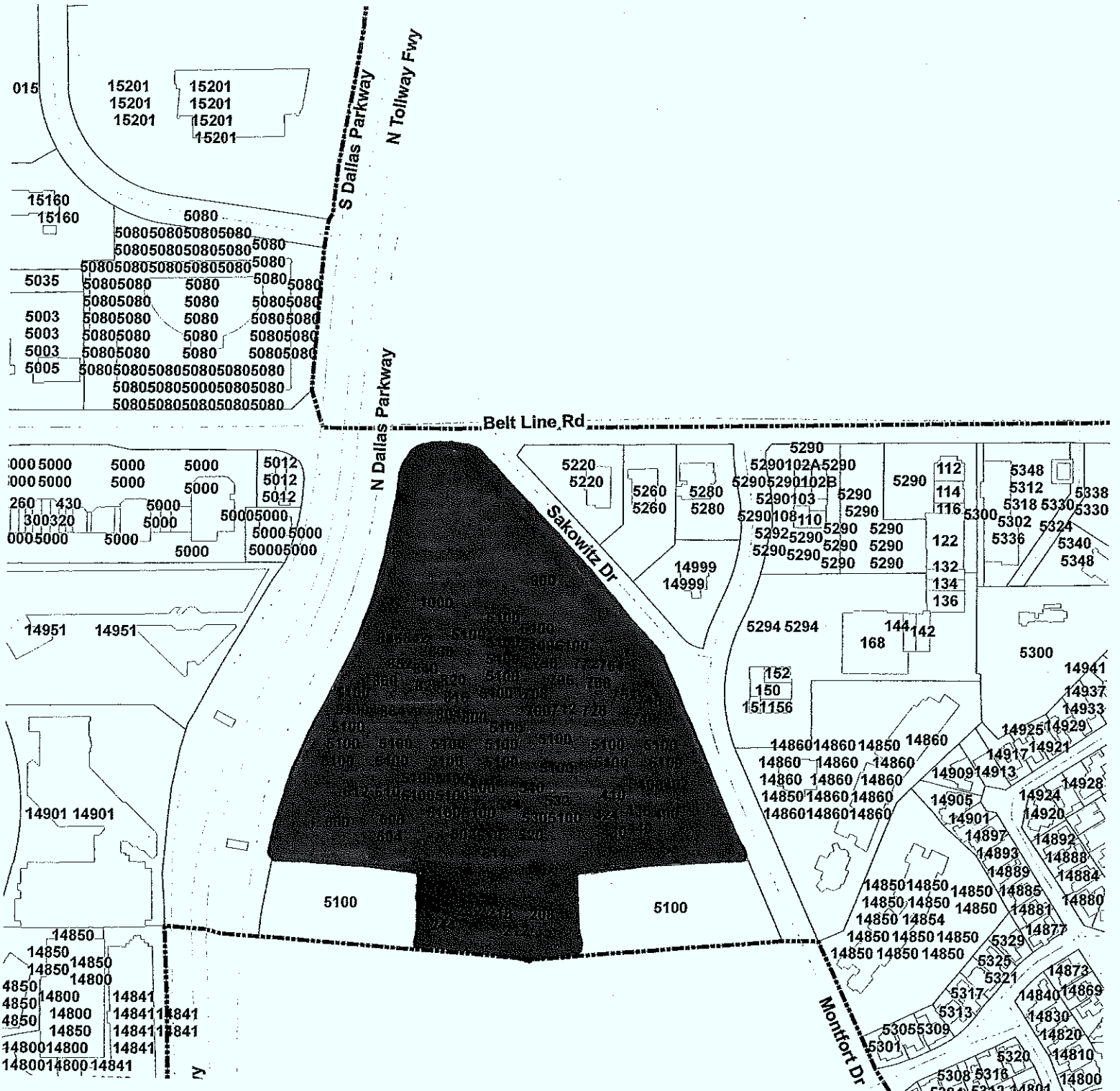
☐ [docket map, staff report, and commission findings](#)

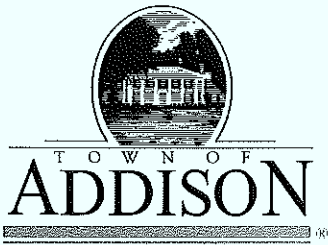
Type:

Cover Memo

# 1644-SUP

**PUBLIC HEARING** Case 1644-SUP/Dream Café. Public hearing, discussion and consideration of approval of an ordinance approving a Special Use Permit for a restaurant, and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, located at 5100 Belt Line Road, Suite 582B on application from Dream Café, represented by Ms. Mary O'Brien.





**DEVELOPMENT SERVICES**

(972) 450-2880 Fax: (972) 450-2837

16801 Westgrove

Post Office Box 9010 Addison, Texas 75001-9010

September 14, 2011

**STAFF REPORT**

**RE:** Case 1644-SUP/Dream Cafe  
**LOCATION:** 5100 Belt Line Road, Suite 582B  
**REQUEST:** Approval of a Special Use Permit for a restaurant, and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption  
**APPLICANT:** Dream Café, represented by Ms. Mary O'Brien

**DISCUSSION:**

**Background.** The Village on the Parkway shopping center has recently sold to The Retail Connection. The new owners are making changes to the center which include moving some tenants into different lease spaces. The Dream Café has been located in a lease space in the east end of the southernmost building on this site since July of 2002, but at this point, it is moving to Suite 582B, which is immediately west of the Flying Fish Restaurant.

**Proposed Plan.** The new Dream Café will encompass 3,724 square feet. The restaurant is a sit-down restaurant with waiter service.

**Façade.** The Dream Café will not make any changes to the existing stucco facades.

**Landscaping.** Slade Strickland has inspected the site, and he finds that there is a dead Red Oak tree on the southeast corner of the Visit Addison location that needs to be removed.

**Parking.** The Village on the Parkway shopping center covers 32 acres and all uses in the center park at a mixed-use ratio of one space per 250 square feet.

**Signs.** The applicant did not show any signs on the façade. The applicant should be aware that all signs must be permitted under the requirements of the Addison Sign ordinance, and cannot be approved through this process. The applicant should also be



aware that the Town has a policy against the use of any terms, or graphic depictions that denote alcoholic beverages in exterior signs.

**RECOMMENDATION:**

Staff recommends approval of the request for Special Use Permit for a restaurant, and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, on application from the Dream Café, subject to the following condition:

-the property owner for this center shall remove a dead Red Oak tree from the southeast corner of the Visit Addison location prior to the issuance of a Certificate of Occupancy for the Dream Café space.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "C Moran". The signature is stylized with a large, looped "C" and a more fluid, cursive "Moran".

Carmen Moran  
Director of Development Services

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on September 22, 2011, voted to recommend approval of a Special Use Permit for a restaurant and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, on application from Dream Café, subject to no conditions.

Voting Aye: Doherty, Groce, Gunther, Hewitt, Oliver, Wheeler,

Voting Nay: none

Absent: Angell

## Memorandum

Date: September 13, 2011  
To: Carmen Moran  
From: Slade Strickland  
Subject: **Case 1644-SUP/Dream Cafe**

The only landscape condition for this site is to remove the dead red oak on the southeast corner of the Visit Addison location. The trees are overcrowded in this area, so staff does not recommend replacing it, as there is not room enough for a new tree to grow.

## **Council Agenda Item: #R8**

### **AGENDA CAPTION:**

Public hearing, consideration, and approval of an ordinance amending the Town's Code of Ordinances by amending Article II (Property Taxation) of Chapter 74 (Taxation) thereof by amending section 74-33 providing for the taxation of certain tangible personal property, described as goods-in-transit, which would otherwise be exempt pursuant to Section 11.253 of the Texas Tax Code, and providing that the taxation of such tangible personal property applies to and is effective for 2012 and all tax years thereafter.

### **FINANCIAL IMPACT:**

The Dallas Central Appraisal District estimates a loss of \$55,284 in taxable value if the Town does not choose to opt out of the exemption and continue the taxation of certain tangible personal property, described as goods-in-transit. At the FY 2012 tax rate of \$0.58 per \$100 valuation the impact of opting out would be an estimated loss of \$321 in tax revenue.

### **BACKGROUND:**

The existing freeport legislation that has been authorized by the Texas Constitution and Section 11.251 of the Property Tax Code allows freeport goods that leave the state within 175 days to be exempt from taxation. This law has been in effect since 1990. In 2007, HB 621 added a new exemption that allowed goods to be exempt from taxation if they are shipped to another location either inside or outside the State of Texas within 175 days.

HB 621 authorized local taxing units to choose to continue taxation at the local option. In November 2007 the City Council, following a public hearing, provided for such continued taxation of these "goods-in-transit" effective with the 2008 tax year and for all tax years thereafter by the adoption of Section 74-33 of the City's Code of Ordinances.

During the 2011 Legislative Session, HB 621 was amended by limiting the exemption to only goods stored in a public warehouse facility which is not owned by the person who owns the goods. The

amendment also requires another action by each local jurisdiction to opt out the exemption and continue the taxation of these goods-in-transit.

The new amendment requires the governing body of an entity to take action between October 1<sup>st</sup> and December 31<sup>st</sup> preceding the applicable tax year and opt out of the exemption on these goods-in-transit. The governing body must first hold a public hearing and then take action.

One of the Town's financial policies that govern development of the Town's annual budget is: "The Town will maintain a policy of levying the lowest tax rate on the broadest tax base. Minimal exemptions will be provided to homeowners, senior citizens, and disabled veterans." In keeping with this policy, staff recommends that Council approve the ordinance to provide for the taxation of such goods-in-transit which are otherwise exempt by Section 11.253 of the Texas Tax Code.

**RECOMMENDATION:**

Staff recommends approval.

**COUNCIL GOALS:**

Mindful Stewardship of Town Resources, Conduct the Business of the Town in a Fiscally Responsible Manner

**ATTACHMENTS:**

Description:

- ☐ [Ordinance](#)
- ☐ [DCAD Letter](#)

Type:

Ordinance  
Backup Material

**TOWN OF ADDISON, TEXAS**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS AMENDING THE CITY'S CODE OF ORDINANCES BY AMENDING CHAPTER 74 (TAXATION), ARTICLE II (PROPERTY TAXATION), DIVISION 1 (GENERALLY), SECTION 74-33 (TAXATION OF GOODS-IN-TRANSIT) THEREOF BY PROVIDING FOR THE TAXATION OF CERTAIN TANGIBLE PERSONAL PROPERTY DESCRIBED AS GOODS-IN-TRANSIT WHICH WOULD OTHERWISE BE EXEMPT PURSUANT TO LAW; PROVIDING THAT THE TAXATION OF SUCH TANGIBLE PERSONAL PROPERTY APPLIES TO AND IS EFFECTIVE FOR 2012 AND ALL TAX YEARS THEREAFTER; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, in 2001 the voters of the State of Texas approved an amendment to the Texas Constitution which added Article 8, Section 1-n which, among other things, authorized the Texas Legislature to exempt from ad valorem taxation goods which meet certain qualifications, including that the goods must be acquired in or imported into the State to be forwarded to another location inside or outside the State not later than 270 days after the date the goods were acquired in or imported into the State; and

**WHEREAS**, in order to implement the provisions of Article 8, Section 1-n, the 80<sup>th</sup> Texas Legislature enacted H.B 621, effective on January 1, 2008, which added Section 11.253 to the Texas Tax Code exempting from taxation certain tangible personal property held temporarily at a location in this State for assembling, storing, manufacturing, processing, or fabricating purposes (goods-in-transit), which property has been subject to taxation in the past; and

**WHEREAS**, notwithstanding the exemption from taxation, H.B. 621 also allowed the governing body of a taxing unit, including the City Council of the Town of Addison, Texas (“City”), to provide for the continued taxation of goods-in-transit after conducting a public hearing, and in November 2007 the City Council, following a public hearing, provided for such continued taxation (effective with the tax year 2008 and for all tax years thereafter) by the adoption of Section 74-33 of the City’s Code of Ordinances, which Section provides for “the taxation of tangible personal property defined and described as ‘goods-in-transit’ in V.T.C.A., Tax Code § 11.253, (as adopted by H.B. 621) exempt pursuant to V.T.C.A. § 11.253, and article 8, section 1-n, Texas Constitution and not exempt from ad valorem taxation by any other law”; and

**WHEREAS**, during the first called session of the 82<sup>nd</sup> Legislature, the Legislature adopted S.B. 1 that, in part, amended Section 11.253 of the Tax Code by (i) modifying the definition of “goods-in-transit” and (ii) adding a new subsection (j-1) that provides that, no matter the prior law or any action the City may have taken prior to October 1, 2011 to tax goods-in-transit exempt under § 11.253(b), Tax Code, and not exempt under other law, the City could not tax goods-in-transit in a tax year that begins on or after January 1, 2012 unless the City Council takes official action to do so on or after October 1, 2011; and

**OFFICE OF THE CITY SECRETARY**

**ORDINANCE NO. \_\_\_\_\_**

**WHEREAS**, the City Council, having given notice of and having conducted a public hearing at which members of the public were permitted to speak for or against the taxation of property (goods-in-transit) as required by Section 1-n(d), Article 8, Texas Constitution and as set forth in Section 11.253(j-1), Tax Code, is of the opinion that it is in the best interests of the City to provide for the taxation of such goods-in-transit which are otherwise exempt by Section 11.253 of the Texas Tax Code and not exempt from ad valorem taxation by any other law.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:**

Section 1. Incorporation of Premises. The above and foregoing premises are true and correct and are incorporated herein and made a part hereof.

Section 2. Amendment. The Code of Ordinances of the Town of Addison, Texas (the "City") is hereby amended by amending Chapter 74 (Taxation), Article II (Property Taxation), Division 1 (Generally), by amending new Section 74-33 to read as follows:

**Section 74-33. Taxation of Goods-in-Transit**

(a) Pursuant to Section 1-n(d) of the Texas Constitution and as authorized by Section 11.253(j), Tex. Tax Code (as adopted by House Bill No. 621, 80<sup>th</sup> Texas Legislature, 2007 Regular Session ("H.B. 621")), the Town elects to tax, and hereby provides for the taxation of, certain tangible personal property defined and described as "goods-in-transit" in Section 11.253, Tex. Tax Code (as adopted by H.B. 621) exempt pursuant to Section 11.253, Tex. Tax Code and Article 8, Section 1-n, Texas Constitution and not exempt from ad valorem taxation by any other law. The taxation of such tangible personal property applies to and is effective for 2008 and all tax years thereafter.

(b) Notwithstanding subsection (a) of this Section 74-33, pursuant to Section 1-n(d) of the Texas Constitution and as authorized by Section 11.253(j-1), Tex. Tax Code (as adopted by S.B. 1, 82nd Legislature, 2011 First Called Session ("S.B. 1")), the Town elects to tax, and hereby provides for the taxation of, certain tangible personal property defined and described as "goods-in-transit" in Section 11.253, Tax Code (as amended by S.B. 1), which goods-in-transit, but for this subsection, are exempt by Section 11.253(b), Tax Code and are not exempt under other law. The taxation of such tangible personal property applies to and is effective for 2012 and all tax years thereafter.

Section 3. Savings. This Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those Ordinances are in direct conflict with the provisions of this Ordinance.

Section 4 Severability. The sections, paragraphs, sentences, phrases, clauses and words of this Ordinance are severable, and if any section, paragraph, sentence, phrase, clause or word in this Ordinance or application thereof to any person or circumstance is held invalid or

unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance, and the City Council hereby declares that it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

Section 5. Effective Date. This Ordinance shall be in full force and effect from and after its passage and approval.

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Todd Meier, Mayor

ATTEST:

By:\_\_\_\_\_  
Chris Terry, City Secretary

APPROVED AS TO FORM:

By:\_\_\_\_\_  
John Hill, City Attorney





August 2, 2011

Katie Roller, Fin. Svcs Supr  
Town of Addison  
P. O. Box 9009  
Addison, Texas 75001-9009

The First Special Session of the 82nd Session of the Texas Legislature adjourned on June 30, 2011. Senate Bill 1 was passed and within this comprehensive budget bill was language amending the Property Tax Code as it concerns the goods-in-transit exemption. This exemption was previously enacted by the Legislature in 2007. The following excerpt from the bill shows the changes:

(2) "Goods-in-transit" means tangible personal property that:

(A) is acquired in or imported into this state to be forwarded to another location in this state or outside this state;

(B) is stored under a contract of bailment by a public warehouse operator at one or more public warehouse facilities in this state that are not in any way owned or controlled by the owner of the personal property for the account of the person who acquired or imported the property;

(C) is transported to another location in this state or outside this state not later than 175 days after the date the person acquired the property in or imported the property into this state; and

(D) does not include oil, natural gas, petroleum products, aircraft, dealer's motor vehicle inventory, dealer's vessel and outboard motor inventory, dealer's heavy equipment inventory, or retail manufactured housing inventory.

(5) "Bailee" and "warehouse" have the meanings assigned by Section 7.102, Business & Commerce Code.

(6) "Public warehouse operator" means a person that:

(A) is both a bailee and a warehouse; and

(B) stores under a contract of bailment, at one or more public warehouse facilities, tangible personal property that is owned by other persons solely for the account of those persons and not for the operator's account.

This bill modifies HB 621 from the 2007 Legislative Session to further limit the exemption by making it only applicable to goods that are stored in a public warehouse facility which is not owned by the

Office of Chief Appraiser  
2949 N. Stemmons Freeway, Dallas, Texas 75247  
214-631-0520 [dallascad.org](http://dallascad.org)

person who owns the goods. I have attached a copy of my letter from June 2007 that explained the original goods-in-transit bill, HB 621.

The amendment also requires that another vote be taken to **opt out** of the exemption between October 1, 2011 and December 31, 2011, in order to tax the goods for 2012. This is done by taking positive action to tax the goods before January 1, 2012 or by January 1 of any subsequent tax year of the first tax year that the governing body proposes to tax goods-in-transit. This must be done by official action of the governing body of the taxing unit. Before that can happen, the governing body of the taxing unit must conduct a public hearing. If the governing body of a taxing unit provides for the taxation of the goods-in-transit as provided by this bill, the exemption prescribed does not apply to that unit. The goods-in-transit remain subject to taxation by the taxing unit until the governing body of the taxing unit, in the manner required for official action, rescinds or repeals its previous action to tax goods-in-transit, or otherwise determines that the exemption will apply to that taxing unit.

Based on the above, if your taxing unit does not act to tax these goods, they will become eligible for this exemption on January 1, 2012. In order to assist you in making this decision, our office has prepared an estimate of the amount of value lost in your jurisdiction if you allow the goods to receive the exemption. This estimate is based on 2011 values. I have also included a summary of how much value was lost in your jurisdiction to the existing Freeport law in 2011.

Remember if you choose to tax these goods, you must act **before January 1, 2012**. This includes allotting enough time to conduct the required public hearing. I am providing this letter to help your agency make an informed decision on this exemption. The Dallas Central Appraisal District has no position on this issue and will administer the exemption according to your wishes. Please review the information we have provided. If you have any questions feel free to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "W. Kenneth Nolan", with a stylized flourish at the end.

W. Kenneth Nolan  
Executive Director/Chief Appraiser

WKN/kd

Attachments

**Goods in Transit Possible Loss in Addition to Freeport Loss**

|                           | <b>Exempt Freeport<br/>Inventory</b> | <b>Goods in Transit<br/>Potential Loss</b> | <b>Total Potential Loss</b> |
|---------------------------|--------------------------------------|--|-----------------------------|
| Dallas County             | \$4,333,380,886                      | \$574,927,017                              | \$4,908,307,903             |
| <b>Cities</b>             |                                      |  |                             |
| Addison                   | \$0                                  | \$55,284                                   | \$55,284                    |
| Balch Springs             | \$1,209,459                          | \$0  | \$1,209,459                 |
| Carrollton                | \$255,735,647                        | \$20,366,573                               | \$276,102,220               |
| Cedar Hill                | \$4,509,186                          | \$249,020                                  | \$4,758,206                 |
| Cockrell Hill             | \$0                                  | \$0  | \$0                         |
| Combine                   | \$0                                  | \$0  | \$0                         |
| Coppell                   | \$258,218,740                        | \$15,041,593                               | \$273,260,333               |
| Dallas                    | \$1,202,715,061                      | \$163,389,282                              | \$1,366,104,343             |
| Desoto                    | \$0                                  | \$144,413                                  | \$144,413                   |
| Duncanville               | \$0                                  | \$0  | \$0                         |
| Farmers Branch            | \$169,024,461                        | \$19,768,784                               | \$188,793,245               |
| Ferris                    | \$0                                  | \$0  | \$0                         |
| Garland                   | \$345,346,456                        | \$38,311,700                               | \$383,658,156               |
| Glen Heights              | \$0                                  | \$0  | \$0                         |
| Grand Prairie             | \$190,156,791                        | \$42,954,958                               | \$233,111,749               |
| Grapevine                 | \$54,485,267                         | \$791,702                                  | \$55,276,969                |
| Highland Park             | \$0                                  | \$233,072                                  | \$233,072                   |
| Hutchins                  | \$21,642,177                         | \$446,819                                  | \$22,088,996                |
| Irving                    | \$0                                  | \$7,487,543                                | \$7,487,543                 |
| Lancaster                 | \$24,927,975                         | \$0  | \$24,927,975                |
| Lewisville                | \$0                                  | \$0  | \$0                         |
| Mesquite                  | \$88,151,396                         | \$29,236,386                               | \$117,387,782               |
| Ovilla                    | \$0                                  | \$0  | \$0                         |
| Richardson                | \$0                                  | \$3,087,780                                | \$3,087,780                 |
| Rowlett                   | \$858,689                            | \$0  | \$858,689                   |
| Sachse                    | \$0                                  | \$0  | \$0                         |
| Seagoville                | \$1,200,304                          | \$0  | \$1,200,304                 |
| Sunnyvale                 | \$82,514,920                         | \$6,813,475                                | \$89,328,395                |
| University Park           | \$0                                  | \$162,766                                  | \$162,766                   |
| Wilmer                    | \$7,188,996                          | \$0  | \$7,188,996                 |
| Wylie                     | \$0                                  | \$0  | \$0                         |
| <b>School Districts</b>   |                                      |  |                             |
| Carrollton Farmers Branch | \$534,486,678                        | \$23,527,012                               | \$558,013,690               |
| Cedar Hill ISD            | \$4,509,186                          | \$249,020                                  | \$4,758,206                 |
| Coppell ISD               | \$374,818,462                        | \$16,708,755                               | \$391,527,217               |
| Dallas ISD                | \$1,231,408,933                      | \$198,897,420                              | \$1,430,306,353             |
| Desoto ISD                | \$0                                  | \$43,401                                   | \$43,401                    |
| Duncanville ISD           | \$80,857,262                         | \$181,330                                  | \$81,038,592                |
| Ferris ISD                | \$0                                  | \$0  | \$0                         |

|                       |               |              |               |
|-----------------------|---------------|--------------|---------------|
| Garland ISD           | \$372,393,234 | \$30,165,426 | \$402,558,660 |
| Grand Prairie ISD     | \$266,353,399 | \$43,310,132 | \$309,663,531 |
| Grapevine-Colleyville | \$948,653,216 | \$203,941    | \$948,857,157 |
| Highland Park ISD     | \$0           | \$400,536    | \$400,536     |
| Irving ISD            | \$0           | \$4,486,404  | \$4,486,404   |
| Lancaster ISD         | \$24,927,975  | \$18,558,022 | \$43,485,997  |
| Mesquite ISD          | \$69,020,784  | \$18,558,022 | \$87,578,806  |
| Richardson ISD        | \$257,803,756 | \$10,370,783 | \$268,174,539 |
| Sunnyvale ISD         | \$82,514,920  | \$6,813,475  | \$89,328,395  |

**Special Districts**

|                          |               |             |               |
|--------------------------|---------------|-------------|---------------|
| Dallas Cnty FCD #1       | \$31,151,861  | \$355,174   | \$31,507,035  |
| DCURD                    | \$53,590,179  | \$46,433    | \$53,636,612  |
| Denton County LID #1     | \$0           | \$0         | \$0           |
| Denton County RUD #1     | \$0           | \$0         | \$0           |
| Denton Co LID#1and RUD#1 | \$0           | \$0         | \$0           |
| Grand Prairie Metro URD  | \$1,152,724   | \$0         | \$1,152,724   |
| Irving FCD Sect 1        | \$20,946,172  | \$674,495   | \$21,620,667  |
| Irving FCD Sect 3        | \$0           | \$0         | \$0           |
| Lancaster MUD #1         | \$0           | \$0         | \$0           |
| Northwest Dallas Co FCD  | \$0           | \$0         | \$0           |
| Valwood                  | \$128,428,430 | \$7,327,298 | \$135,755,728 |

## **Council Agenda Item: #R9**

### **AGENDA CAPTION:**

Discussion and consideration of approval of a Resolution approving, and authorizing the City Manager to execute, an Interlocal Master Agreement with Dallas County for the purpose of Transportation Improvements on roads in Dallas County that are designated on the North Central Texas Council of Governments Regional Thoroughfare Plan.

### **FINANCIAL IMPACT:**

NA

### **BACKGROUND:**

The Town's current Master agreement with Dallas County will expire in July 2012. The County is in the process of renewing all its agreements with the various cities and has asked that the Town renew its agreement. This agreement is for a ten year period and provides the mechanism for Dallas County to provide funding and assistance to the Town on specifically identified projects. When a specific project is identified, the Town and Dallas County execute a PSA (Project Specific Agreement) which details the responsibilities of each party. In order to execute a PSA, the Town must have a current Master Agreement with the County.

### **RECOMMENDATION:**

Staff recommends approval subject to final review of the City Attorney.

### **COUNCIL GOALS:**

Mindful Stewardship of Town Resources, Provide Superior Public Safety, Customer Service, Social and Health Services to the Community, Conduct the Business of the Town in a Fiscally Responsible Manner

### **ATTACHMENTS:**

Description:

- ☐ [Resolution for Interlocal Agreement](#)
- ☐ [Dallas County Master Agreement](#)

Type:

Resolution Letter  
Cover Memo

**TOWN OF ADDISON, TEXAS**

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS, APPROVING AN AGREEMENT BETWEEN THE TOWN AND DALLAS COUNTY ENTITLED "MASTER AGREEMENT GOVERNING MAJOR CAPITAL IMPROVEMENT PROGRAM"; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE TOWN; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council of the Town of Addison, Texas desires to enter into an agreement with the Council of Dallas entitled "Master Agreement Governing Major Capital Improvement Program" regarding transportation improvements on roads inside Dallas County that are on the Regional Thoroughfare Plan of the North Central Texas Council of Governments.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:**

Section 1. The City Council does hereby approve that agreement between the Town of Addison, Texas ("City") and the County of Dallas entitled "Master Agreement Governing Major Capital Improvement Program" (a true and correct copy of which is attached hereto as Exhibit 1). The City Manager is hereby authorized to execute the said Agreement on behalf of the City and to take such other steps as may be necessary to implement the same.

Section 2. This Resolution shall take effect immediately from and after its passage and approval.

**PASSED AND APPROVED** by the City Council of the Town of Addison this \_\_\_\_ day of \_\_\_\_\_ 2011.

\_\_\_\_\_  
Todd Meier, Mayor

ATTEST:

By: \_\_\_\_\_  
Chris Terry, City Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
John Hill, City Attorney

## **EXHIBIT 1**

*[attach copy of Master Agreement  
Governing Major Capital Improvement Program]*

## **MASTER AGREEMENT GOVERNING MAJOR CAPITAL IMPROVEMENT PROGRAM**

**THIS MASTER AGREEMENT** is made by and between the City/Town of Addison, Texas, hereinafter called "City" or "Town", and Dallas County, hereinafter called "County", acting by and through its duly authorized officials, which desire to enter into an Interlocal Agreement, hereinafter called Master Agreement, for the purpose of Transportation Improvements on roads inside Dallas County that are on the North Central Texas Council of Government's Regional Thoroughfare Plan.

### **WITNESSETH**

**WHEREAS**, pursuant to Court Order 2002-1375, dated July 30, 2002, County Commissioners Court approved participation in Transportation Major Capital Improvement Program within the cities inside Dallas County; and

**WHEREAS**, the approved project lists may be modified, updated or approved by the Commissioners Court on a periodic, as-needed basis; and

**WHEREAS**, Chapter 791 of the Texas Government Code, as amended, provides authorization for local governments to enter into interlocal agreements; and

**NOW THEREFORE, THIS AGREEMENT** is hereby made and entered into by City/Town and County for the mutual consideration stated herein:

### **ARTICLE I. DEFINITIONS**

The following definitions are incorporated into this agreement for all purposes.

- A. **AMENDMENT** shall mean a written document executed by all parties detailing changes, additions or deletions in the Master Agreement.
- B. **AMENITY** shall mean Project features not included in the Standard Basic Project Design including but not limited to street pavers, colored concrete, planters, irrigation, decorative lighting, special signage, or any other feature above and beyond the Standard Basic Project Design or any increase in capacity in excess of County determined requirements based on anticipated future traffic flow.
- C. **CITY/TOWN** shall mean the City/Town of Addison, Dallas County, Texas.
- D. **CONTEXT SENSITIVE SOLUTIONS (CSS)** is a collaborative, interdisciplinary approach that involves all stakeholders to develop a transportation facility that fits its physical setting and preserves scenic, aesthetic, historic and environmental resources, while maintaining safety and mobility. CSS is an approach that considers the total context within which a transportation improvement project will exist. CSS principles include the employment of early,



continuous and meaningful involvement of the public and all stakeholders throughout the project development process. It is the intent of Dallas County Public Works Department to use the essential elements of CSS in all approaches to deliver the project. Some projects will dictate very intense use of CSS, while others will only use a few of the elements, but the County will always consider CSS.

- E. **COUNTY** shall mean County of Dallas, State of Texas.
- F. **DIRECT PROJECT and PROGRAM COSTS** shall mean those costs that can be identified specifically with a particular project or program cost objective. These costs generally include compensation of employees for the time devoted and identified specifically to the performance of the project or program, cost of materials acquired, consumed or expended specifically for the purpose of the project or program; equipment changes; damage claims and other approved capital expenditures; change orders; travel expenses incurred specifically to carry out the project including, but not limited to, design, right-of-way, road or street drainage, utility relocation and adjustment and construction. Direct Cost does not include either City/Town or County general overhead.
- G. **EFFECTIVE DATE** shall mean the date of the signature of the last person necessary for this **Master Agreement** to become effective.
- H. **EXTRA TERRITORIAL JURISDICTION- (ETJ)** shall mean the unincorporated area outside the incorporated boundaries of the municipality as determined in Chapter 42 of the Texas Government Code, as amended.
- I. **FIVE PHASE PROJECT DELIVERY SYSTEM** shall mean the process for delivering a project from conception to completion as detailed in Exhibit A, attached hereto and as well as any additions or supplements thereto. The five phases of the project delivery system are planning, design, right of way, utility clearance, and construction.
- J. **FUNDING AGREEMENT** shall mean the agreement between the County and a City/Town to establish a preliminary proposed budget for a project. As design is completed and the engineering estimate is refined, the funding agreement shall be incorporated into the Project Specific Agreement.
- K. **INDIRECT COSTS** shall mean those costs that benefit more than one project and cannot be readily identified with a particular final project or program cost objective. Their precise benefits to a specific project are often difficult or impossible to trace.
- L. **IN-HOUSE PROJECT DELIVERY COSTS** shall mean all costs associated with the development of the Major Capital Improvement Program (MCIP) "Call for Projects", selection of projects, scoping of projects, project design, property acquisition and construction of projects. Cost Accounting shall include but is not limited to employee time reimbursement, materials, equipment and other expenditures necessary for the management and continuation of the MCIP.
- M. **INTERLOCAL AGREEMENTS** shall mean contracts or agreements entered into between City/Town and County in accordance with Texas Government Code Chapter 791.
- N. **LEAD AGENCY** shall mean that entity responsible for project management, including, but not limited to planning, design, right-of-way acquisition, approved utility relocation or adjustment and construction unless otherwise designated.
- O. **MASTER AGREEMENT** shall mean this document including all incorporated documents, attachments, and exhibits.

- P. **MEMORANDUM OF AGREEMENT (MOA)** shall mean a written document which incorporates the results of the Preliminary Design Charrette.
- Q. **MULTI-MODAL CONNECTIVITY IMPROVEMENTS** shall mean projects which comply with the concepts in the 2005 SAFETEA-LU Act, any amendments, or any future federal transportation acts which increase safety, accessibility, flexibility, efficiency, and enhance the integration and connectivity of the transportation system, across and between modes throughout the County for motorized and non-motorized users.
- R. **ORPHAN ROADS** shall mean all or part of a street or road right of way which are outside the incorporated limits of a municipality (or municipalities) and the incorporated area of the municipality (or municipalities) abuts or extends into the right of way. These roadway segments have, in effect, been "orphaned" by the abutting City/Town (or cities) that they serve in that they have been left unincorporated. Thus the County has primary responsibility for maintenance, operation, enforcement, police and/or emergency services within these unincorporated rights of way.
- S. **PARCEL OR PARCELS** shall mean those portions or part of land and improvements located either wholly or partially thereon, identified by County, City/Town or other Stakeholder as required for right-of-way requirements of the Project. Such right-of-way shall include the existing street, road, drainage or other City/Town or County real property ownership and all additional real property to be utilized for the Project.
- T. **PRELIMINARY CONCEPT CHARRETTE (PCC)** shall have the same meanings and purposes as the Preliminary Design Charrette, but be conducted very early in the design start, before substantial design is underway. The conditions for which a PCC is appropriate will be determined by the lead agency, but will usually be a greater uncertainty of what the road improvement will involve, the purposes, varying contexts (e.g. Transit Oriented Development, Recreational Oriented Development, Industrial Oriented Development, etc.). Use of CSS will usually mean that a PCC will be conducted, since its use fits perfectly into CSS concepts. Other conditions encountered may dictate the use of a PCC, such as poor soils, presence of unconsolidated solid waste dumps, innovative integration of master planning with project delivery, unusual ROW challenges, budgetary constraints (thus calling for significant Value Engineering efforts), etc. The results of properly using a PCC will be that early consensus will be achieved on a basic approach to the project design and construction, thus avoiding wasted design funding and loss of momentum for project delivery.
- U. **PRELIMINARY DESIGN CHARRETTE (PDC)** shall mean a meeting of decision making stakeholders and other members of the project team for the purpose of discussing feasible design alternatives, forging strong consensus among all stakeholders for the selected alternative, and entering into a MOA for the overall estimate, alignment and scope of the project. The PDC will be scheduled when the preliminary design is complete or near completion. This means horizontal and vertical alignment alternatives have been designed, ROW requirements are at least approximately known for each alternative, and the design is 40% to 60% complete. The result of a PDC that is conducted with all the stakeholders present is that the strong consensus achieved will help assure the project is able to overcome any challenges with design completion, ROW acquisition, utility design and relocation, and finally, road construction.
- V. **PROJECT MANAGER** shall mean the person appointed by the Lead Agency who is assigned the primary duty for assuring Project Team coordination and timely project delivery. There will be only one Project Manager assigned to a Project.

- W. **PROJECT TEAM** shall mean representatives from County, City/Town, and other Stakeholders as may be mutually agreed upon by County, City/Town and Stakeholders or otherwise with responsibility for delivering the completed Project.
- X. **PROJECT(S)** shall mean the proposed thoroughfare and multi-modal connectivity improvements approved by the Commissioners Court for inclusion in the Transportation MCIP and approved by the City/Town.
- Y. **PROJECT DURATION** shall mean the active life of the project. Project shall commence with the application for a project by the City/Town and acceptance by the Dallas County Commissioners Court. Project shall be considered complete when construction has been fully completed and the one year maintenance period has expired or the project has been terminated in accordance with Article IV of this Agreement.
- Z. **PROJECT SPECIFIC AGREEMENT or PROJECT SUPPLEMENTAL AGREEMENT (PSA)** shall mean an agreement subsequent to this document which is entered into to establish the contractual rights and responsibilities of the City/Town and County as it relates to a particular Project. A PSA supersedes the MOA or Funding Agreements.
- AA. **RIGHT OF WAY (ROW)** is a strip of land that is granted, through a ROW deed, an easement or other mechanism, for the Project. ROW shall mean that real property or property interest identified by County or City/Town, as necessary for the construction of the Project which shall include the existing street, road, drainage or other City/Town or County real property ownership and all additional real property to be utilized for the Project.
- BB. **SCOPING SHEETS** shall be attached to each PSA. These sheets will set forth the design criteria to be used for the project, including the alignment, appropriate specifications, typical section and other parameters of the project. As project goals and needs are more clearly defined the Scoping Sheets shall be updated and revised by the project manager to reflect current construction goals.
- CC. **STANDARD BASIC PROJECT DESIGN** shall mean the standard County-approved City/Town criteria for paving, bridges, drainage and appurtenances, traffic control items including pavement marking, warranted uniform signals, street light foundations, pull boxes, conduit, sidewalks, medians, storage/turn lanes, access, required structural retaining walls and standard driveways excluding road or street amenities, or such design criteria as may be mutually agreed upon in a project Scoping Sheets.
- DD. **TxDOT** shall mean the Texas Department of Transportation.
- EE. **UTILITIES** shall mean each City/Town utility, public utility, common carrier, governmental or quasi-governmental facility, fiber optic facility, or other facility located within the limits of the Project by virtue of Texas or Federal Law or agreement between the entity and the City/Town, County, or State of Texas.
- FF. **CITY/TOWN UTILITY** shall mean those owned or operated by City/Town which requires relocation or adjustment for the purpose of the construction of the Project as identified by Project plans.
- GG. **UTILITY IN PUBLIC RIGHT-OF-WAY** shall mean all UTILITIES located within the limits of any governmental entity.
- HH. **UTILITY IN PRIVATELY OWNED RIGHT-OF-WAY** shall mean all Utilities, excluding City/Town Utilities, whose facilities are located within a private easement.

- II. **UTILITY BETTERMENT** shall mean any increase in the capacity of any Utility's Facility adjusted or relocated as a part of the PROJECT as compared to the existing Facility, or any upgrading of the Utility's Facility above the standard practices, devices or materials, specified by the Utility and customarily used by City/Town or Utility on projects solely financed by City/Town or Utility. Provided, however, that any adjustments necessary to successfully accomplish the Project shall not be considered a Betterment, and further, that any increase in the capacity of the Utility Facility resulting solely from the replacement of devices or materials no longer regularly manufactured, processed or installed shall not be considered a Betterment, provided that such replacement shall be only to the standard devices or materials currently used on other projects financed solely by City/Town or Utility. This meaning shall apply to utilities that are part of the project as well as the standard basic street components (See "STANDARD BASIC PROJECT DESIGN").

## **ARTICLE II. PERIOD OF THE AGREEMENT**

This Master Agreement becomes effective when signed by the last party whose signing makes the respective agreement fully executed (The "Effective Date"). This Master Agreement shall expire ten years from the Effective Date unless terminated in accordance with Article IV.

## **ARTICLE III. AMENDMENTS**

This Master Agreement may be amended with the mutual consent of the City/Town and County. Any amendment must be in writing and approved by the parties' respective governing bodies through either a Court Order from Commissioners Court or a City/Town Council Resolution.

## **ARTICLE IV. TERMINATION, DEFAULT, TIME OF THE ESSENCE AND FORCE MAJEURE**

### **A. TERMINATION**

- a. This Master Agreement may be terminated by any of the following conditions:
  1. By expiration of term of the agreement.
  2. By either party, by notice in writing establishing the effective date of termination to the other party as consequence of the party being in default of the provisions of this Agreement or any supplemental agreement or failure to timely provide funding, with proper allowances being made for circumstances beyond the control of the defaulting party.
  3. By either party with ninety days written notice to the other party.
- b. Should either party terminate this Master Agreement as herein provided, all existing, fully executed supplemental agreements made under this Master Agreement shall not be terminated and shall automatically incorporate all the provisions of this Master Agreement.
- c. In the event that any supplemental agreement is terminated prior to completion of the Project, no additional Costs shall be incurred other than Costs due and payable at the time of termination for services actually performed or that shall become due and payable due to such termination. The Lead Agency, to the extent permitted, may terminate all project contracts,



unless written notice is given by either party to the other of its intent to complete the Project, and prepare a final accounting for the Project.

- d. If the Project is terminated by the City/Town prior to the award of any construction contract and the Project is located within the City/Town limits, City/Town shall pay to County the full amount expended by County on the project and County shall transfer to City/Town its rights and all deliverables that it may be entitled to receive under the existing professional services or other project contracts or agreements. Such amount shall be included in the final accounting for the Project. Such amount shall be due and payable in full ninety (90) days subsequent to the termination, or thirty days subsequent to delivery of final accounting.
- e. Once the construction contract has been awarded by the governing body of the Lead Agency, the PSA for that Project cannot be terminated until completion of the construction.
- f. In the event that a Project is terminated prior to the award of the construction contract, either party may, upon written notice, take over the project and prosecute the work to completion by contract or otherwise at its sole cost and expense. In the event that the party completing the work is not the Lead Agency, it is agreed that the Project Manager will furnish to the Completing Party a listing of current records pertaining to any outstanding obligations or other records or information required by any project contract, including any Work Order, or requested in writing by Completing Party in either printed or electronic format or both. The Lead Agency agrees to cooperate with the Completing Party. The Lead Agency will use its best efforts to transfer to the Completing Party all contracts. Obligations under such contracts shall become the sole obligation of the Completing Party upon transfer. Completing party agrees to timely pay all future obligations under such contract as they become due and payable. Completing Party hereby releases the Lead Agency from any and all liability under such assigned contracts subsequent to date of transfer, effective upon the transfer date. Lead Agency shall exercise its best efforts to insure a transition of services without interruption.

Either party shall have the right to retain copies of all data, information, engineering, studies, or other items produced to the date of termination.

- g. Provisions b through g of this section shall survive the termination of this Master Agreement and any PSA and shall be a continuing obligation until the transition of services, all payments made and the Projects are complete. All items listed or required in this provision shall be furnished by Lead Agency to Completing Party without additional cost or expense to completing party.

#### B. FORCE MAJEURE:

Neither County nor City/Town shall be deemed in violation of this Contract if it is prevented from performing any of its obligations hereunder by reason of, for or through strikes, stoppage of labor, riot, fire, flood, invasion, insurrection, accident, order of court, judge or civil authority, an act of God, or any cause reasonably beyond the party's control and not attributable to its neglect. In the event of such an occurrence the time for performance of such obligations or duty shall be suspended until such time that such inability to perform, shall be removed. The party claiming the suspension shall give notice of such impediment or delay in performance to the other party within ten (10) days of the knowledge of such occurrence. Each party shall make all reasonable efforts to mitigate the effects of any suspension. The provisions of this Article IV section B shall survive the termination of this Master Agreement.

## **ARTICLE V. LIABILITY FOR ACT AND OMISSIONS**

County and City/Town agree that both County and City/Town shall each be responsible for their own negligent acts or omissions or other tortuous conduct in the course of performance of this Master Agreement without waiving any sovereign or governmental immunity available to either County or City/Town under Texas law and without waiving any available defenses under Texas law. Nothing in this paragraph shall be construed to create or grant any rights, contractual or otherwise, in or to any third persons or entities. The provisions of this Article V shall survive the termination of this Master Agreement.

## **ARTICLE VI. LEAD AGENCY**

- A. Lead Agency shall be that entity which is responsible for the project from conception through to completion of construction. City/Town and County may choose for County to manage project through design and construction and for City/Town to acquire ROW.
- B. In the event that the City/Town is Lead Agency the City/Town shall:
  - a. Provide project management and leadership from project selection to construction completion following the 5 Phase Project Delivery System as detailed in Exhibit A, attached hereto and as well as any additions or supplements thereto;
  - b. Lead Agency shall be responsible for hosting the Preliminary Concept Charrettes and or Preliminary Design Charrettes and Neighborhood Public Workshops;
  - c. Acquire ROW necessary for project;
  - d. Enter into or obtain whatever agreements or permits necessary for project completion;
  - e. Provide County with opportunity for significant input in plan development and periodic progress reviews; and
  - f. Provide records for periodic auditing for either financial accounting or engineering accounting or both.
- C. For City/Town-led projects in which the City/Town is considering to specify transportation infrastructure elements exceeding the Standard Basic Project Design criteria, County funding will only be eligible to the Standard Basic Project Design criteria unless the City/Town and County have arrived at mutual agreement through involvement of County during the initial design phases including the Design Partnering Kick-off Meeting and as necessary the Preliminary Concept Charrette and Preliminary Design Charrette meetings.

## **ARTICLE VII. CITY/TOWN COVENANTS AND AGREES AS FOLLOWS:**

- A. To execute with reasonable promptness the necessary agreements for the implementation of design and construction of the Projects mutually agreed upon and incorporated herein by PSA.
- B. To provide City/Town Council Resolution adopting approved preferred alignment, proposed estimated budget, and commitment to meet Project funding for each milestone as specified herein or in the Funding Agreement and/or PSA.
- C. To provide City/Town Council Resolution adopting the subdivision regulation in the ETJ as defined in Article XVII below.

- D. City/Town agrees to share the funding of each Project with County on an equal share basis of 50%/50% or as otherwise agreed cost sharing arrangement as specified in a Funding Agreement and/or PSA with the following exclusions:
- a. City/Town shall bear the entire cost of:
    1. City/Town owned utilities relocation or adjustment such as water and sanitary sewer facilities, except utility adjustments directly attributable to storm sewer improvement conflicts;
    2. Amenities including but not limited to street pavers, colored concrete, planters, decorative lighting, special signage, or any other feature over the Standard Basic Project Design;
    3. Utility Betterments
    4. Direct costs of City/Town which is fulfilling the role of Lead Agency, shall be totally funded by City/Town unless supported by a detailed hourly accounting system equal to County's accounting system.
    5. City/Town Indirect Costs.
- E. When mutual written agreement has been reached as to Projects' concepts, design elements and limits by County and City/Town at the PDC, City/Town agrees to acquire ROW required for designated projects by voluntary dedication, the subdivision platting process and/or other legal means, to the maximum extent possible, and to ensure through the building permitting process that setback requirements are imposed to limit encroachment upon the required ROW. City/Town agrees to fund ROW not acquired, but reasonably expected to be acquired. City/Town also agrees to fund the removal of improvements that are encroachments within existing or proposed ROW areas.
- F. In the event of any proposed use of the Project ROW that will conflict with the proposed Project and City/Town is unable to obtain such ROW as described above, City/Town shall notify County of such conflict. County and City/Town shall determine if the acquisition of the conflicting parcel would be in the best interest of the Project. In the event that agreement is reached and the parcel is acquired such cost shall be included in the pro rated cost of the project in the agreed upon proportions.
- G. City/Town hereby grants the County authority to enter into eminent domain proceedings within the City/Town limits on each specific ROW alignment and/or project as approved by the City/Town and County.
- H. To require all Utilities located within or using the present public ROW on all designated transportation projects within City's/Town's municipal limits to adjust and/or relocate said Utilities as required by the proposed improvement of the designated transportation Project. City/Town Utilities shall be relocated or adjusted at no cost to County except as may be specifically set forth in this Master Agreement.
- I. City/Town agrees to be cooperative on issues relating to billboards, advertising signs, non-conforming uses, zoning and similar restrictions and to exercise its best efforts to provide variances when possible to minimize cost and delay of Project. Additional Project cost caused or contributed to by City/Town ordinance, zoning, non-conforming use determination or other requirement shall be paid in full by City/Town.
- J. City/Town shall require the adjustment and/or relocation of Utilities to be accomplished and finalized, as expeditiously as possible after approval of final plans to prevent Project schedule

delays. Notwithstanding anything contained herein to the contrary, all Utilities shall be adjusted or relocated and the ROW clear for construction not later than thirty (30) days prior to the award of the construction contract. City/Town will notify the County and other Stakeholders when utility conflicts would impact progress of the project completion. County and City/Town agree to work in partnership and with all Stakeholders to solve the problem; to include engaging elected officials in the problem resolution with the goal to prevent delays in the commencement or prosecution of construction on the Project.

- K. Where planned roadway improvements (including, but not limited to storm drainage,) are in conflict with City/Town owned water and sanitary sewer systems, that could otherwise remain in place, the actual costs of the necessary adjustment of City/Town water and sewer utilities shall be pro rated at the overall percentage agreed to by City/Town and County for cost sharing. City/Town shall be responsible for funding one hundred percent (100%) of any Betterment; as well as 100% of any relocation that is caused by City/Town installation during the Project Duration. Except as provided herein, all costs for adjustment and/or relocation of utilities in the public ROW shall be the responsibility of the Utility Owner or of the City/Town Utility. Any Project delay or other damages caused by City/Town Utility failure to timely relocate or adjust the facility shall be at the entire cost of City/Town.
- L. To provide for continuing surveillance and control of ROW to prevent the construction, placement, storage or encroachment of any signs, personal property or other appurtenances in the existing or proposed ROW. In the event that the aforementioned features are allowed by City/Town to encroach on necessary ROW during the duration of the project, City/Town shall bear the entire cost of removal or relocation of said encroachment.
- M. To provide to County for County's or County's designee's use, at no cost, adequate copies of all construction standards, codes, (specifically including zoning and development codes), plats, specifications, guidelines, standards or any other pertinent information as determined by County to be required for the completion of the Project. Additionally, City/Town shall furnish County, at no cost, such documents as necessary to keep all items previously furnished to County current.
- N. Actively participate and provide authorized representation with decision making power at PCC and/or PDC, preconstruction meeting, partnering meetings and project team meetings which are necessary to project development/completion and fiduciary relationships.
- O. City/Town agrees to provide timely review of interim submittals. "Timely review" will be agreed upon during the PCC and/or PDC as a part of the Project schedule. City/Town further agrees that if no review notes are submitted by City/Town in writing to County on a timely basis, plans are approved as submitted.
- P. When City/Town is Lead Agency City/Town agrees to allow forty-five days for County review of submittals and any comments shall be incorporated into final document.
- Q. City/Town agrees that it will pay all additional project cost for any City/Town requested discretionary change, including, but not limited to Amenities and Utility Betterments, in or addition to the design or construction of the project subsequent to the City/Town opportunity to review the sixty five percent (65%) design plans.
- R. Provide at City's/Town's cost for the continuing maintenance of all the Project ROW, such as mowing, drainage, trash removal, etc., during the period between acquisition and construction.
- S. During the construction of the Project and after completion of the Project, City/Town will be responsible for the control, operation, police enforcement and/or emergency services, without cost or contribution from the County.



- T. After the completion of a Project and the one year maintenance period, the City/Town will be responsible for all future maintenance without cost or contribution from the County.
- U. Bear the entire cost of design, construction and administration for landscaping, streetscaping, streetlighting, as such items are not included in the Standard Basic Project Design and other amenities specified or requested by City in excess of Standard Basic Project Design.
- V. It is the intent of this Master Agreement that the County will be the Lead Agency. In the event that the City/Town and County agree in writing that City/Town will manage and administer one or more Projects, City/Town and County will enter into a PSA as to that project(s). In such instance, City/Town agrees to assume all Lead Agency responsibilities except as may be set forth in the PSA as determined by mutual consent.

#### **ARTICLE VIII. UTILITY IMPACTS.**

- A. In cases where a Utility is located in a Privately Owned ROW, and it is necessary to relocate the facility or make adjustments by reason of the widening or improvement of the designated project, the County (or City/Town if acting as the Lead Agency) will, after submission by utility company of ROW documentation and cost estimates acceptable to the City/Town, County and other Stakeholders, assign the actual costs for the relocation and/or adjustment of said utility to the Project.
- B. In cases where a Utility in Public ROW, excluding City/Town Utilities, occupies any portion of the Project ROW by Texas or Federal Law or by agreement with the City/Town that allows or permits the City/Town to cause the relocation of the utility for the construction of the project, the City/Town shall timely require and enforce the relocation or adjustment requirement at no cost to the project. In the event that the City/Town has no legal or contractual right to cause the relocation, the relocation or adjustment shall be relocated or adjusted and all cost shall be a Project Cost. City/Town shall take all steps necessary to insure that such relocation or adjustment shall not conflict with or delay the Project schedule.

#### **ARTICLE IX. COUNTY COVENANTS AND AGREES AS FOLLOWS:**

- A. To provide as a Project Cost preliminary engineering which will define project details, e.g., location, scope of work and specific right of way alignment for each improvement. Such preliminary engineering shall be submitted to the City for approval, prior to proceeding with the final design and any right of way acquisition.
- B. To provide as a Project Cost for the construction of transportation improvements based upon design criteria conforming to Standard Basic Project Design in conformity with applicable City ordinances and standards, to the extent of Commissioners Court approved program funding. Scope of work shall include the agreed upon design standards as the basis for improvement criteria. Deviations from mutually agreed upon application of City/Town standards and/or design criteria shall require prior approval of City/Town. Where City/Town standards do not exist, TxDOT standards as of the Effective Date of this Master Agreement shall be utilized unless otherwise mutually agreed by PSA.
- C. To actively participate and provide authorized representation at Predesign Charrette, preconstruction meeting, partnering meetings and project team meetings which are necessary to project development and completion and fiduciary relationships.

- D. To provide project management of each Project where County is Lead Agency from commencement to completion of construction. City and County may further agree by mutual consent to redefine project management roles as beneficial to the Project as defined in the MOA and supplemental agreements.
- E. Upon receipt of written request detailing the information requested, to provide information related to the Project to City/Town or City's/Town's designee at no cost to the City.
- F. County agrees to provide review of interim submittals within forty-five days and hereby agrees that if no review notes are submitted by County (if City/Town is filling the role as Project Manager) in writing to City/Town, plans are approved as submitted.
- G. To submit final engineering plans for review and written approval by City/Town at least thirty (30) days prior to advertising for construction.
- H. To provide for the acquisition, including acquisition by Eminent Domain, of the necessary additional ROW, on designated projects, in accordance with minimum standard requirements and utilizing existing public ROW to the maximum extent possible as a Project cost.
- I. To require all contractors to secure all necessary permits required by City/Town on said construction projects.
- J. To furnish record drawings of construction plans for the permanent records of City/Town within twelve (12) months upon completion and acceptance of the transportation improvement Project.
- K. To transfer the real property or property interest acquired by County and used for the Project to City/Town.
- L. In the event County and City agree in writing that City will be the Lead Agency for the agreed upon Project, County will reimburse City for agreed costs as detailed in Article XIII. (Funding) in an amount not to exceed the Project cost as approved by Dallas County Commissioners Court and incorporated in the PSA. All County payments shall be in accordance with County Policies and Procedures or as may be mutually agreed between the parties and incorporated in a PSA.

#### **ARTICLE X. PRELIMINARY DESIGN CHARRETTE (PDC), PRELIMINARY CONCEPT CHARRETTE (PCC)**

- A. City/Town and County, as specified in Articles VII and X, respectively, will designate officials or representatives to participate in a PCC and/or PDC to be conducted on a mutually agreeable date and location. At least part of this meeting will be conducted on the Project site.
- B. Results from PCC will identify the general project scope, the basic approach and concepts to be taken with the project, the elements of CSS that will be included, and some ideas for alignments alternatives. Lead agency will already have been determined, and as well as project administration and management roles, to include the Project Manager. Key project team participants shall be introduced to stakeholders at the PCC and or PDC. Results from the PDC will identify the preferred alignment of the project which all stakeholders can support and build momentum behind, and provide all stakeholders a commitment for project delivery schedules and project budgets.

#### **ARTICLE XI. FISCAL FUNDING**

Notwithstanding anything to the contrary herein, this Master Agreement is expressly contingent upon the availability of County funding for each item and obligation contained herein. City/Town shall have

no right of action against the County as regards this Master Agreement, specifically including any funding by County of the Project in the event that the County is unable to fulfill its obligations under this Master Agreement as a result of the lack of sufficient funding for any item or obligation from any source utilized to fund this Master Agreement or failure of any funding party to budget or authorize funding for this Master Agreement during the current or future fiscal years. In the event of insufficient funding, or if funds become unavailable in whole or part, the County, at its sole discretion, may provide funds from a separate source or terminate this Master Agreement. In the event that payments or expenditures are made, they shall be made from current funds as required by Chapter 791, Texas Government Code.

Notwithstanding anything to the contrary herein, this Master Agreement is expressly contingent upon the availability of City/Town funding for each item and obligation contained herein. County shall have no right of action against the City/Town as regards this Master Agreement, specifically including any funding by City/Town of the Project in the event that the City/Town is unable to fulfill its obligations under this Master Agreement as a result of the lack of sufficient funding for any item or obligation from any source utilized to fund this Master Agreement or failure of any funding party to budget or authorize funding for this Master Agreement during the current or future fiscal years. In the event of insufficient funding, or if funds become unavailable in whole or part, the City/Town, at its sole discretion, may provide funds from a separate source or terminate this Master Agreement. In the event that payments or expenditures are made, they shall be made from current funds as required by Chapter 791, Texas Government Code.

#### **A. ARTICLE XII. FUNDING**

A. City/Town and County mutually agree to proportionately fund the Direct Project and Program costs as agreed by the parties in a PSA. Unless otherwise specified in the PSA, County shall bear fifty percent (50%) of the total Direct Project and Program costs excluding the Amenities, relocation or adjustment of City/Town Utilities, Utility Betterment, Indirect Cost, Direct Cost not supported by detailed hourly accounting system and other items as specified in this Master Agreement, Funding Agreement or any PSA. County shall not be responsible for any amount of funding in excess of the Project not-to-exceed amount as shown in the PSA. Unless otherwise specified in the PSA, City/Town shall bear fifty percentage (50%) of all Direct Project and Program costs. In addition, City/Town agrees to fund all other City cost as provided herein, including, but not limited to, Amenities, relocation or adjustment of City/Town Utilities, Utility Betterment, Indirect Cost, Direct Cost not supported by detailed hourly accounting system and other items as specified in this Master Agreement, Funding Agreement or any PSA.

B. Unless otherwise stated in a PSA, the milestones for each project shall be (1) preliminary and primary design (2) ROW acquisition and utility relocation or adjustment and (3) construction. The Lead Agency shall prepare an estimated cost for each milestone. Upon approval of the cost by the other party, each party shall fund its share of the respective milestones by placing that amount of money in an escrow account or otherwise encumber the funds to insure that the Lead Agency will have sufficient funding available from current revenue for the timely payment of Project milestone costs. The Lead Agency may bill the other party for periodic payments for the actual amount of work completed toward the completion of the milestone. Upon completion of the milestone, the non-management party will be furnished a notice that such work has been completed and the amount of funding that may be utilized to pay subsequent milestone Project cost. Notwithstanding any other term or condition contained herein or in any PSA, neither party will be required to award any contract until

written certification has been received that funding has been placed in escrow or encumbered for the payment of the non-awarding party's portion of the Project cost.

C. In the event that the cost of the Project shall exceed the not-to-exceed amount, City/Town and County agree to either reduce the scope of construction or seek additional funding to complete the Project at the agreed upon cost share percentages. At the termination of the Project, the Lead Agency will do a final cost accounting of the Project. In the event that the amount paid by either party exceeds its portion of the actual cost, the difference will be remitted to such party. In the event that additional funds are due, the Lead Agency will bill the other party who agrees to pay such funds within thirty (30) days of receipt of such billing.

D. If City/Town elects to manage Project, County will reimburse City/Town based on invoices for actual costs expended as supported by documentation approved by County Auditor. Any and all supporting documentation required by County Auditor shall be included with invoice from City/Town.

E. Upon execution of a PSA, City/Town shall escrow an amount adequate for initial project costs which County may use to pay for initial professional services required for scoping, preliminary, and primary design.

F. City/Town and County shall enter into Funding Agreement and/or PSA to establish commitments as required for each project. Suggested timeframes for Funding Agreements, PSAs and/or any amendments are:

- a. As soon as project accepted by Commissioners Court and as a result of the kick off partnering meeting, a Funding Agreement to establish Lead Agency for preliminary engineering and general funding responsibilities and procedures for reimbursement by Participating Agency; or
- b. When the preliminary engineering plans are at 60% complete; or
- c. After construction bids are opened amend the PSA as needed.

### **ARTICLE XIII. NO THIRD-PARTY BENEFICIARY ENFORCEMENT.**

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement and all right of action relating to such enforcement shall be strictly reserved to City/Town and County and nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other person on this Agreement. It is the express intention of City/Town and the County that any entity other than City/Town or the County receiving services or benefits under this agreement shall be deemed an incidental beneficiary only. This Agreement is intended only to set forth the contractual right and responsibilities of the agreement parties.

### **ARTICLE XIV. RIGHT OF ENTRY**

The City/Town agrees that County shall have the right to enter upon the Project area for the time period necessary for the completion of the Project. City/Town agrees to furnish such police or other City/Town personnel as requested by County for traffic control or other public safety matters at no cost to the Project or County.



## **ARTICLE XV. LIST OF PROJECTS**

City/Town agrees that it has been furnished with a list of the potential Projects as approved by the Dallas County Commissioners Courts, subject to the agreement between the parties of a PSA. City/Town stipulates and agrees that the Commissioners Court Order approving the projects identifies the potential Project location and describes the type of project in sufficient detail that the City/Town is fully aware of the location and type of projects being considered.

## **ARTICLE XVI. ORPHAN ROAD POLICY;**

The County encourages all cities adjacent to orphan roads in the county to develop, commit to and submit a plan to the County for completing the annexation of the orphan road segments and assuming full responsibility for these roadways. In instances where two cities abut the same orphan road segment, the County encourages the two cities to jointly develop a plan of the annexation of that segment. The County offers its assistance to the cities in developing such plans.

- A. The County, at the discretion of the Commissioners' Court, may give additional selection value to projects in cities that have submitted a specific plan for the annexation of orphan roads when the County selects, approves and schedules projects for funding in the County's major MCIP. Such preference may also be given in approving projects for road and bridge district participation (Type "B" work).
- B. The County, at the discretion of the Commissioners Court, may also refuse to participate in discretionary projects, such as road and bridge district projects or MCIP projects, in a City/Town that elects not to pursue the annexation of orphan road segments that abut its boundaries. Failure to notify the County of the City's/Town's intent to annex and/or failure to submit a plan for annexation in a timely manner shall be construed by the County as the City's/Town's election not to pursue annexation.
- C. The County, at the discretion of the Commissioners Court, may select specific orphan road segments for improvement when a City commits to annexation of the segment upon completion of the project. However, the specific plan for annexation of orphan roads submitted by the City/Town will not be limited to annexation upon completion of improvements by the County. The County improvements may be made as road and bridge projects or as MCIP projects (subject to other MCIP criteria including regional thoroughfare plan designation and City/Town cost participation.)
- D. This policy application is prospective and projects selected by the County and approved by the Commissioners Court prior to the date of the adoption of this policy shall not be impacted by this policy.
- E. The County shall provide written notification of the adoption of, and future revisions of, this policy to the cities abutting orphan road segments.
- F. The provisions of this Article XVI shall survive the termination of this Master Agreement.

(Ord. No. 2002-637; Ord. No 2006-1171)

**ARTICLE XVII. SUBDIVISION REGULATIONS IN THE  
EXTRA TERRITORIAL JURISDICTION**

County and City/Town agree that Town is the office that is authorized to: (1) accept plat applications for tracts of land located in the extraterritorial jurisdiction; (2) collect all applicable plat application fees; (3) provide applicants one response indicating approval or denial of the plat application; and (4) establishes a single set of consolidated and consistent regulations related to plats, subdivision construction plans, and subdivisions of land. The provisions of this Article XVII shall survive the termination of this Master Agreement.

**ARTICLE XVIII. MISCELLANEOUS GENERAL PROVISIONS**

**A. Applicable Law.** This Agreement and all matters pertinent thereto shall be construed and enforced in accordance with the laws of the State of Texas and exclusive venue shall be in Dallas County, Texas. Notwithstanding anything herein to the contrary, this Agreement is expressly made subject to County's and City/Town's Sovereign Immunity, Title 5 of Texas Civil Practice and Remedies Code, and all applicable State of Texas and Federal laws.

**B. Entire Agreement.** This Agreement, constitutes the entire agreement between the parties hereto and may not be modified except by an instrument in writing executed by the parties hereto as herein provided.

**C. Severability.** If any provision of this Agreement shall be held invalid, void or unenforceable, the remaining provisions hereof shall not be affected or impaired, and such remaining provisions shall remain in full force and effect.

**D. Default/Waiver/Mitigation.** It is not a waiver of default if the non-defaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this Agreement does not preclude pursuit of other remedies in this Agreement or provided by law.

**E. Federal or State of Texas Funding.** In the event that any work or part thereof is funded by State of Texas or U. S. Government funding and any statute, rule, regulation, grant, contract provision or other State of Texas or U. S. Government law, rule, regulation or other provision imposes additional or greater requirement(s) than stated herein, City/Town agrees to timely comply therewith without additional cost or expense to County.

**F. Headings.** The titles which are used following the number of each paragraph are only for convenience in locating various provisions of this Agreement and shall not be deemed to affect the interpretation or construction of such provision.

**G. Number and Gender.** Words of any gender used in this Agreement shall be held and construed to include any other gender; and words in the singular shall include the plural and vice versa, unless the text clearly requires otherwise.

**H. Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

**I. Notice.** Any notice provided for in this Agreement to be given by either party to the other, shall be required to be in writing and shall be deemed given when personally delivered, or three (3) business days after being deposited in the United States Mail, postage prepaid, certified, returned receipt requested, or registered addressed as follows:

To County: County of Dallas  
Director of Public Works  
Dallas County  
Administration Building  
411 Elm Street, Fourth Floor  
Dallas, Texas 75202-3389

To City/Town: Town of Addison, Texas  
Director of Public Works  
PO Box 9010  
Addison, Texas 75001-9010

Either party may change its address for notice by giving the other party notice thereof.

The City/Town of Addison, State of Texas, has executed the Agreement pursuant to duly authorized City/Town Council Resolution \_\_\_\_\_, Minutes \_\_\_\_\_ Dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

The County of Dallas, State of Texas, has executed this agreement pursuant to Commissioners Court Order Number \_\_\_\_\_ and passed on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**TOWN OF ADDISON**

**COUNTY OF DALLAS**

BY \_\_\_\_\_  
TITLE

BY \_\_\_\_\_  
Clay Lewis Jenkins, County Judge

DATE \_\_\_\_\_

DATE \_\_\_\_\_

ATTEST \_\_\_\_\_  
CITY SECRETARY \ ATTORNEY

APPROVED AS TO FORM:

\_\_\_\_\_  
\*Gordon R. Hikel, Chief, Civil Division  
Dallas County District Attorney

\*By law, the District Attorney's Office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval by their own respective attorney(s).

## **Council Agenda Item: #R10**

### **AGENDA CAPTION:**

Discussion and consideration authorizing the City Manager to execute amendment #4 with Freese and Nichols for the Elevated Storage Tank Design in the amount not to exceed \$26,261.48.

### **FINANCIAL IMPACT:**

Funds are available in the Capital Project Funds.

### **BACKGROUND:**

As Council may recall Cleanfield was the original wind turbine selected for the Elevated Storage Tank project. Early in the project, it was learned that there had been a failure with this particular wind turbine. The contractor investigated the failure and based on that investigation determined that it was not prudent to proceed with the Cleanfield wind turbine and proposed an alternative, the UGE wind turbine. The amendment is to cover Freese and Nichols time associated with the evaluation of this new wind turbine as well as 12 future inspection visits for the wind turbines, 2nd floor equipment, anemometer and cabling. In addition the amendment covers the cost of 13 inspection visits that were incurred early in the project. These inspections were to inspect the 15 drilled piers for the foundation.

### **RECOMMENDATION:**

Staff recommends approval.

### **COUNCIL GOALS:**

Conduct the Business of the Town in a Fiscally Responsible Manner, Take actions to make Addison a leader in sustainable development and operations that protect and enhance the Town's quality of life

### **ATTACHMENTS:**

Description:

☐ [Amendment #4](#)

Type:

Cover Memo





Innovative approaches  
Practical results  
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September 13, 2011

Lea Dunn  
Deputy Town Manager  
Town of Addison  
5300 Beltline Road  
Dallas, Texas 75254

Re: Surveyor 1.5 MG Elevated Storage Tank  
Proposal for Contract Amendment #4

Dear Ms. Dunn:

As discussed in our recent phone conversation with Nancy Cline, our sub-consultant Dunham Engineering has provided inspection of all 15 of the drilled piers for this project at the request of the Town. Initially, the foundation was intended to be a spread footing, which would have required 2 inspections. However, Landmark chose to construct a pier foundation with 15 drilled piers. Subtracting the budgeted 2 foundation inspections from the total 15 piers constructed and inspected, we request an additional 13 inspection visits be added to our scope and fee.

We also request additional scope and fee for our services connected with evaluation of Landmark's proposed wind turbine system alternative. These services included obtaining and reviewing Cleanfield's report of their turbines' failure at the Hess Building in Houston, attendance at two presentations by Landmark on UGE wind turbines, and attendance at the tour of the UGE wind turbine units installed in Friendswood, Texas. Please note that the proposed fee increase does not include review of Landmark's shop drawing submittals on the wind turbines, as this is already covered in our existing scope and fee.

In addition, our understanding is that the Town desires FNI to provide inspection of the wind energy system construction. This will include up to twelve total inspection visits for the wind turbines, 2<sup>nd</sup> floor equipment, anemometer, and cabling, and ground display wind turbine unit.

As outlined in the attached proposal, we request a not to exceed fee increase of \$26,261.48 for these additional services.

We have attached 2 signed originals for your consideration. If you agree with the proposal, please sign and date both originals, and return one original to us for our records. We appreciate the opportunity to be of continued service to the Town of Addison.

Yours Truly,

A handwritten signature in blue ink, appearing to read 'Ron King', written over the typed name 'Ron King, P.E.'.

Ron King, P.E.



**CONTRACT CHANGE AUTHORIZATION FORM**  
**Amend #04**

|  |   |  |              |                        |                     |   |              |   |             |           |             |
|--|---|--|--------------|------------------------|---------------------|---|--------------|---|-------------|-----------|-------------|
| <b>Client:</b> Town of Addison<br>P. O. Box 9010<br>Addison, TX 75001<br>Attn:   | <b>FNI Project No.:</b> ADD08459<br><b>Client Contract Ref.:</b><br><b>Date:</b> September 13, 2011   |  |              |                        |                     |   |              |   |             |           |             |
| <b>Project Description:</b> Surveyor 1.5 MG Elevated Storage Tank Design – Amendment #4  |   |  |              |                        |                     |   |              |   |             |           |             |
| <b>Description of Services Added/Deleted:</b> <ol style="list-style-type: none"> <li>1. Perform inspections of 13 drilled piers for the tank foundation (services already performed at Owner's request).</li> <li>2. Assist with review of proposed alternate wind turbines (services already performed at Owner's request):           <ol style="list-style-type: none"> <li>a. Obtaining and reviewing Cleanfield failure reports</li> <li>b. 5-6-11 Meeting with Eric Lamon on wind turbines</li> <li>c. 6-1-11 UGE Presentation of wind turbines</li> <li>d. 6-7-11 Tour of UGE wind turbines in Friendswood</li> </ol> </li> <li>3. Inspect wind energy system construction, including up to 12 inspection visits.</li> </ol> |   |  |              |                        |                     |   |              |   |             |           |             |
| <b>Compensation shall be adjusted as follows:</b><br>Add the following not-to-exceed fee: <table style="width:100%; margin-left: 40px;"> <tr> <td>• 13 pier inspection trips x \$500.00 per trip =</td> <td align="right">\$ 6,500.00</td> </tr> <tr> <td>• FNI 10% Sub markup =</td> <td align="right">\$ 650.00</td> </tr> <tr> <td>• Assist with alternate wind turbines =</td> <td align="right">\$10,803.39</td> </tr> <tr> <td>• Inspect wind energy system construction =</td> <td align="right">\$ 8,308.09</td> </tr> <tr> <td>• Total =</td> <td align="right">\$26,261.48</td> </tr> </table>   |   | • 13 pier inspection trips x \$500.00 per trip = | \$ 6,500.00  | • FNI 10% Sub markup = | \$ 650.00           | • Assist with alternate wind turbines = | \$10,803.39  | • Inspect wind energy system construction = | \$ 8,308.09 | • Total = | \$26,261.48 |
| • 13 pier inspection trips x \$500.00 per trip =   | \$ 6,500.00   |  |              |                        |                     |   |              |   |             |           |             |
| • FNI 10% Sub markup =   | \$ 650.00   |  |              |                        |                     |   |              |   |             |           |             |
| • Assist with alternate wind turbines =  | \$10,803.39   |  |              |                        |                     |   |              |   |             |           |             |
| • Inspect wind energy system construction =  | \$ 8,308.09   |  |              |                        |                     |   |              |   |             |           |             |
| • Total =  | \$26,261.48   |  |              |                        |                     |   |              |   |             |           |             |
|  | <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%;"><b>Original Contract</b></td> <td align="right">\$593,055.00</td> </tr> <tr> <td><b>Amended Amount</b></td> <td align="right"><b>\$ 26,261.48</b></td> </tr> <tr> <td><b>Revised Total Contract</b></td> <td align="right">\$619,316.48</td> </tr> </table> | <b>Original Contract</b>                         | \$593,055.00 | <b>Amended Amount</b>  | <b>\$ 26,261.48</b> | <b>Revised Total Contract</b>           | \$619,316.48 |   |             |           |             |
| <b>Original Contract</b>   | \$593,055.00  |  |              |                        |                     |   |              |   |             |           |             |
| <b>Amended Amount</b>  | <b>\$ 26,261.48</b>   |  |              |                        |                     |   |              |   |             |           |             |
| <b>Revised Total Contract</b>  | \$619,316.48  |  |              |                        |                     |   |              |   |             |           |             |
| <b>Schedule shall be adjusted as follows:</b><br><br>No schedule change  |   |  |              |                        |                     |   |              |   |             |           |             |

*The above described services shall proceed upon return of this Contract Change Authorization. Services will be billed as they are done. All other provisions, terms, and conditions of the agreement for services which are not expressly amended shall remain in full force and effect.*

- ☐ A contract modification will be submitted.
- ☒ This Contract Change Authorization will serve as contract modification.

**FREESE AND NICHOLS, INC.:**
**TOWN OF ADDISON:**

 BY: 

BY: \_\_\_\_\_

Ron King, P.E.  
 Print or Type Name

 \_\_\_\_\_  
 Print or Type Name

 TITLE: Denton Office Manager

TITLE: \_\_\_\_\_

 DATE: 9-13-11

DATE: \_\_\_\_\_

## **Council Agenda Item: #R11**

### **AGENDA CAPTION:**

Discussion and consideration authorizing the City Manager to execute amendment #2 with RH Shackelford in the amount not to exceed \$193,054 to provide project management and inspection services for current projects and proposed projects; engineering services as needed and a review and analysis of the Public Works Department operations.

### **FINANCIAL IMPACT:**

Funds are available in the various capital project funds for the project management. Funds for engineering services and a review of the Department are available in the FY12 Utility and Street Department budgets.

### **BACKGROUND:**

In November 2010, the Town selected R.H. Shackelford from a list of 11 firms who submitted an RFQ to provide Program/Project Management Professional Services in an effort to provide support on an as needed basis for current and future projects. The Town has utilized Shackelford's services on several projects including Spring Valley, Redding Trail, the Belt Line lighting and landscaping improvements, and some of the Vitruvian projects. Shackelford's current contract expires September 30. Staff is recommending that the contract be amended for an additional four months to provide for continued construction management and inspection services on the Belt Line lighting and landscaping improvements and the Elevated Storage Tank; design and construction management for the Belt Line paving, under grounding of utilities and bus stop project; and the Vitruvian Weir improvements if needed. Total cost for these services is an estimated amount not to exceed \$132,377.23.

In addition staff has also requested Shackelford's assistance in reviewing the Departmental operations to determine the best way for addressing the future engineering needs for the Town. Shackelford will assess each of the various operations and review the various initiatives that the Town must meet. Total cost for providing this review is an amount not to exceed \$34,923.

During this transition period, staff has also requested that Shackelford provide engineering services on an as needed basis. Total cost for providing these services is an amount not to exceed \$25,754.

**RECOMMENDATION:**

Staff recommends approval.

**COUNCIL GOALS:**

Mindful Stewardship of Town Resources, Conduct the Business of the Town in a Fiscally Responsible Manner

**ATTACHMENTS:**

Description:

- ☐ [Amendment #2](#)
- ☐ [Amendment #2 detail](#)

Type:

Cover Memo  
Cover Memo

**RFQ 11-04 Program /Project Management Professional Services  
Amendment No. 2**

**Company: R.H. Shackelford, Inc.**

**Amendment to Existing Program Project Management Services thur March 31, 2012**

**PRICE/COST SCHEDULE**

| Discipline &<br>Job Classification   | Principal & Consultant<br>RHSI / CFA / URS / APEX /<br>JQA / SRM / Lwanda |                |                     |
|--------------------------------------|---|----------------|---------------------|
|                                      |   | 2012 Base Year |                     |
| PROGRAM / PROJECT MGMT               | TOTAL HRS   | RATE           | TOTAL               |
| 1. Principal                         | 219   | \$161.40       | \$35,346.60         |
| 2. Project Manager                   | 361   | \$129.48       | \$46,742.28         |
| 3. Architect / Engineer Professional |   | \$105.16       |                     |
| 4. Engineer II                       | 86  | \$112.38       | \$9,664.68          |
| 5. Construction/Project Mgr          | 140   | \$130.60       | \$18,218.70         |
| 6. Assistant Construction Mgr        |   | \$103.27       |                     |
| 7. Project Assistant                 |   | \$66.82        |                     |
| 8. Senior Estimator                  | 16  | \$155.22       | \$2,483.52          |
| 9. Estimator II                      | 24  | \$99.64        | \$2,391.36          |
| 10. Estimator I                      |   | \$66.15        |                     |
| 11. Senior Inspector                 | 98  | \$85.04        | \$8,355.18          |
| 12. Inspector                        | 629   | \$72.89        | \$45,847.81         |
| 13. Project Professional             | 250   | \$91.12        | \$22,780.00         |
| 14. Specification Writer             |   | \$79.51        |                     |
| 15. CADD Technician                  |   | \$58.75        |                     |
| 16. Estimator II                     |   | \$99.64        |                     |
| 17. Administrative                   | 24  | \$51.01        | \$1,224.24          |
|                                      |   |                |                     |
| PAGE 1 of 1                          |   |                | <b>\$193,054.37</b> |

Amendment will be invoiced monthly on a hourly basis, owner will only be invoiced for those hours worked. This amendment covers all project listed below until March 31, 2012.

This Amendment will cover the Belt Line Median, Surveyor EST, Vitruvian Bella projects Construction Phase Construction Management & Inspection. And the Design Phases of the Vitruvian Upstream Bella, Vitruvian Weir, Beltline Bus Stops, Beltline Mill & Overlay and Beltline Underground Utilities projects. Program Management and Purchasing Assistance and other Miscellaneous Projects as assigned are estimated and will be utilized on an "as needed basis." All these project costs will be paid for from the Capital Budget.

Also covered will be the cost for Permit Review and Enginnering as required and the Public Works Department comprehensive review. This review will provide a complete review of existing operations and will result in recommendations for the best course of action for executing and partial outsourcing the Public Work Departments operations and tasks.

**BREAKDOWN - BY PROJECT**

| <b>BELTLINE - CONSTRUCTION PHASE</b>                               | <b>ESTIMATED HRS</b> | <b>ESTIMATED COST<br/>BASED ON HRS</b> |
|--|----------------------|--|
| Construction Manager   | 63                   |  |
| Senior Inspector   | 72                   |  |
| Inspector  | 576                  |  |
| Project Professional   | 72                   |  |
|  |                      | \$62,895.96                            |
| <b>SURVEYOR EST - CONSTRUCTION PHASE</b>                           |                      |  |
| Construction Manager   | 39                   |  |
| Inspector  | 13                   |  |
|  |                      | \$6,041.02                             |
| <b>VITRUVIAN WELL - CONSTRUCTION PHASE</b>                         |                      |  |
| Construction Manager   | 20                   |  |
| Inspector  | 40                   |  |
| Project Professional   | 24                   |  |
|  |                      | \$7,714.48                             |
| <b>VITRUVIAN UPSTREAM BELLA - DESIGN PHASE</b>                     |                      |  |
| Project Manager  | 52                   |  |
| Project Professional   | 16                   |  |
|  |                      | \$8,190.67                             |
| <b>VITRUVIAN WEIR - DESIGN PHASE</b>                               |                      |  |
| Project Manager  | 32                   |  |
| Project Professional   | 16                   |  |
|  |                      | \$5,601.15                             |
| <b>BELTLINE BUS STOPS - DESIGN PHASE</b>                           |                      |  |
| Project Manager  | 52                   |  |
| Project Professional   | 15                   |  |
|  |                      | \$8,099.55                             |
| <b>BELTLINE MILL &amp; OVERLAY - DESIGN PHASE</b>                  |                      |  |
| Project Manager  | 32                   |  |
| Engineer II  | 4                    |  |
| Senior Estimator   | 4                    |  |
| Estimator II   | 8                    |  |
| Project Professional   | 20                   |  |
|  |                      | \$7,833.13                             |
| <b>BELTLINE - UNDERGROUND UTILITIES - DESIGN PHASE</b>             |                      |  |
| Project Manager  | 144                  |  |
| Engineer II  | 12                   |  |
| Senior Estimator   | 12                   |  |
| Estimator II   | 16                   |  |
| Project Professional   | 28                   |  |
|  |                      | \$26,001.28                            |
| <b>ESTIMATED TOTAL (ABOVE PROJECTS)</b>                            |                      | <b>\$132,377.23</b>                    |
| <b>PERMIT REVIEW AND OTHER ENGINEERING AS REQUESTED (4 MONTHS)</b> |                      |  |
| Principal  | 35                   |  |
| Project Manager  | 35                   |  |
| Engineer II  | 70                   |  |
| Construction Manager   | 18                   |  |
| Project Professional   | 35                   |  |
| Senior Inspector   | 26                   |  |
|  |                      | \$25,753.99                            |
| <b>PUBLIC WORKS DEPT REVIEW</b>                                    |                      |  |
| Principal  | 184                  |  |
| Project Manager  | 14                   |  |
| Project Professional   | 24                   |  |
| Administrative   | 24                   |  |
|  |                      | \$34,920.82                            |

## **Council Agenda Item: #R12**

### **AGENDA CAPTION:**

Discussion and consideration of approval of a resolution affirming the appointment of a member of the DART Board of Directors.

### **FINANCIAL IMPACT:**

### **BACKGROUND:**

On August 23, 2011, the DART Board of Directors approved a resolution selecting a reapportionment of the DART Board of Directors based on the 2010 Census and adopting the required plan for assigning members to fill new groupings resulting from the plan. A copy of that resolution is attached to this item.

Under Section 452.573 of the Texas Transportation Code, municipalities in the DART service area must either affirm the appointment of the member designated in the DART Board Reapportionment Plan, or appoint a new member for the designated group of municipalities on or before October 31, 2011.

### **RECOMMENDATION:**

### **COUNCIL GOALS:**

N/A

### **ATTACHMENTS:**

Description:

☐ [DART Resolution](#)

Type:

Cover Memo





**RESOLUTION  
Of the  
DALLAS AREA RAPID TRANSIT BOARD**

**110089**

**(Executive Committee)**

***RESOLUTION***

**Dallas Area Rapid Transit Reapportionment of the DART Board of Directors**

WHEREAS, Section 452.577 of the Texas Transportation Code requires that the DART Board be restructured when needed because of population changes as of September 1 after the date that the census data becomes available; and

WHEREAS, data from the 2010 Census indicates a need for a such a reapportionment at this time; and

WHEREAS, the Board has deliberated this matter and in three briefing sessions and has received and considered comments from the municipalities in the DART service area which contained information about the commonality of community interests; and

WHEREAS, as required by Section 452.578, the Board has a plan for filling vacancies following the reapportionment to ensure that each municipality maintains the representation to which it is entitled.

NOW, THEREFORE, BE IT RESOLVED by the Dallas Area Rapid Transit Board of Directors that:

Section 1: The Board selects the following option as the apportionment of its members and that the listed Board members shall represent the municipality or municipalities indicated effective September 1, 2011:


| Board Member           | Term Ends | Cities   |
|------------------------|-----------|--|
| Ray Noah               | 2012      | Addison, Highland Park, Richardson & University Park |
| William Velasco        | 2013      | Dallas & Cockrell Hill                               |
| Faye Wilkins           | 2012      | Plano & Farmers Branch                               |
| Mark C. Enoch          | 2012      | Garland, Rowlett & Glenn Heights                     |
| Randall Chrisman       | 2013      | Carrollton & Irving                                  |
| Scott Carlson          | 2013      | Dallas   |
| Richard Carrizales     | 2012      | Dallas   |
| Jerry L. Christian     | 2013      | Dallas   |
| Pamela Dunlop Gates    | 2013      | Dallas   |
| Robert Strauss         | 2012      | Dallas   |
| William Tsao           | 2013      | Dallas   |
| Claude R. Williams Jr. | 2013      | Dallas   |
| Michael T. Cheney      | 2012      | Garland  |
| John Danish            | 2013      | Irving   |
| Loretta L. Ellerbe     | 2012      | Plano  |



Section 2: In addition to the possible need for reapportionment as required by Chapter 452 of the Texas Transportation Code, as amended, no later than September 1, 2016, the Board shall undertake a reapportionment analysis based on the official NCTCOG 2015 population estimates if that estimate indicates that the combined seat ratio for the municipalities Carrollton and Irving has increased from the 2010 Census data.



Scott Carlson  
Secretary



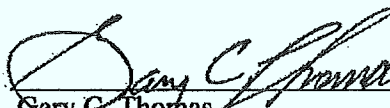
William Velasco  
Chair

APPROVED AS TO FORM:



DART Counsel

ATTEST:



Gary C. Thomas  
President/Executive Director

August 23, 2011

Date

## **Council Agenda Item: #ES0**

### **AGENDA CAPTION:**

Closed (Executive) session of the Addison City Council pursuant to Section 551.087, Texas Government Code, to discuss or deliberate regarding commercial or financial information that the City Council has received from a business prospect or business prospects that the City Council seeks to have locate, stay, or expand in or near the territory of the Town of Addison and with which the City Council is conducting economic development negotiations, and/or to deliberate the offer of a financial or other incentive to such business prospect or business prospects.

### **FINANCIAL IMPACT:**

TBD

### **BACKGROUND:**

N/A

### **RECOMMENDATION:**

N/A

### **COUNCIL GOALS:**

Provide For A Diversified Business Climate

### **ATTACHMENTS:**

Description:

Type:

No Attachments Available

## **Council Agenda Item: #R0**

### **AGENDA CAPTION:**

Consideration of any action regarding commercial or financial information that the City Council has received from a business prospect or business prospects that the City Council seeks to have locate, stay, or expand in or near the territory of the Town of Addison and with which the City Council is conducting economic development negotiations, and/or any action regarding the offer of a financial or other incentive to such business prospect or business prospects.

### **FINANCIAL IMPACT:**

TBD

### **BACKGROUND:**

N/A

### **RECOMMENDATION:**

N/A

### **COUNCIL GOALS:**

Provide For A Diversified Business Climate

### **ATTACHMENTS:**

Description:

Type:

No Attachments Available